

By J. Gooding.

THE  
Law against Bankrupts :  
OR, A  
TREATISE  
Wherein the  
STATUTES  
AGAINST  
BANKRUPTS  
are Explained,  
BY

Several Cases, Resolutions, Judgments and Decrees, both at Common Law and in *Chancery*.

TOGETHER

With the Learning of Declarations and Pleadings relating thereunto.

To which are likewise added Forms and Directions for Commissioners, and Presidents, fit for the perusal of Lawyers, or Merchants and Tradesmen.

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*Sic utere tuis, ut aliena non Ledas.*

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By T. G. Serjeant at Law.

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Thomas Gooding.

LONDON,

Printed for S. Heyrick, C. Harper, J. Place, J. Harrison, S. Keeble, D. Brown, J. Cleave, W. Rogers, R. Sars, W. Freeman, T. Goodwin, M. Wotton, R. Vincent, A. Roper, and J. Brixey, 1695.

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THE  
PREFACE  
TO THE  
READER.

THE Statutes of *Bankrupts*,  
and the Proceedings thereupon (to any persons who entertain the least Commerce, and know the World but at an ordinary rate) will certainly appear to be very important; and not only in respect of the greatness of the Estates, the variety and multiplicity of Debts, Credits and Accounts, about which they are

## *The Preface.*

concerned ( the effects whereof are derived down upon thousands of Families ) but also in regard of the extream Severities and Penalties which are inflicted on the Offenders. And I have often wondred, that so little hath been written on a Subject which makes *so great a Figure* amongst Men of Business , either at *Westminster-Hall*, or upon the *Exchange*. Nay, I may add ( to carry on this Reflection a little further ) the concerns of Bankrupts, which were heretofore almost wholly managed within the Precincts of our Capital City or famous Marts, are now descended into Country-Towns and Villages, so that it is become a matter of Publick Consideration.

There are but two ( that I know of ) who have designedly Treated on this Subject : Mr. *Serjeant Stone*, who was a Learned Lawyer and the greatest Commissioner in his time, hath left us his Readings on one of the Statutes against Bankrupts ; which are indeed full of Moot-Cases , ingeniously contrived, but there are not many

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many stated Resolutions ; the Cases of Services, Tenures, Seifins, Wardships, and the like, are not practicable now ; and besides, he hath applied his Reading to one Statute only, and that the first ; whereas the defects of that Law hath been abundantly aided and supplied by subsequent Statutes, so that He cannot be sufficiently directive in this Grand Concern : And Mr. *Billinghurst*, who, for so much as he hath attempted, is Acceptable ; but we must say, he hath done little more than to improve the method to which the Statutes themselves naturally lead him ; the Resolutions are but few, neither do they extend to thousands of Cases that daily happen in these weighry matters.

Having therefore had some loose Papers, relating to this Subject, brought to my hands, upon perusal of them, I found they might be useful as well for Lawyers as Merchants and other Traders : I considered we are not born meerly for our selves ; we are sometimes, at least, obliged to

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render our selves *serviceable* to the welfare of the Publick Society whereof we are Members, and to do something that may be useful for others. I then (the whole being left to my disposal) made some Additions and Subtractions, as I thought convenient, and moulded them into some Frame and Order; the result whereof is this little Piece (for Voluminousness I never affected) which I now present to you. Whereof I think it becomes me to give this short Account:

To address my self then in the first place to the Gentlemen of the Long Robe, I conceive it might be some advantage, not only to cite (under Proper Titles) our Printed Law Cases, and in some places to correct them, (but that very sparingly, for it is expected we should read Reporters in their own Words) but to add some Cases not extant, which I have observed in the Course of my Profession. I have, in some measure, considered the Learning of Declarations and Pleadings upon Actions brought

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brought by the Assignees of the Commissioners, the usefulness whereof I need not stand to Illustrate. The Forms and Presidents (tho' I have not displayed all the *Arcana's* of the Commissioners Practice) will be sufficient to give such hints and helps to an ingenious inquisitive Mind, as thereby to enable him, upon occasion, to frame Instruments of the like nature. In which let me recommend the President of the *Scire Facias* upon a Judgment recovered by the Bankrupt against an Executrix, which I take to be the exactest in its kind, and which was found in the Manuscripts of Mr. *Pynsent*, a very Judicious Practiser and Prothonotary of the *Common Pleas* (now deceased.)

As for the Merchants and Tradesmen, the advantage of a Treatise of this Nature will appear if we consider them as Creditors or Debtors, and into one of these two Ranks we may generally cast them. For, it is morally impossible to think that a Merchant can make a solemn Protestation in this sort; *I owe to no Body,*  
and

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*and no Body owes to me.* Affairs of this nature cannot admit of such even Ballances: If we consider the prospects and allurements of Advantage and Profit, the insinuations of Business, the Twistings and Links of Commerce; in short (I say) if we reflect on the Revolutions, Movements and Intreagues of Trading, we may then find reason to pronounce, that no Trading Merchant (while he continues such) can say to his Shop-Book (which is as restless as that watty and unstable Element) *hitherto shalt thou go and no further.*

You who are not not only dipt, but drencht in Debt, may see here how to manage your Concerns with so much Prudence, as to avoid those dangerous Shelves on which thousands of Families have been irrecoverably ruin'd. For I am very confident, many have committed, or suffered such Acts of Bankruptcy, which they never understood would bring them within the Compass of the Statutes; but have thought that it only consisted in Absconding or downright Running.

You

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You who are Creditors, may in this receive hints how to secure your Debts in time, and to be precautioned not to be too forward in any fraudulent Contrivances, when you are sensible your Debtor is a Bankrupt, tho' no Commission be awarded out against him : And also how, and in what time you are to be relieved by the Statutes, and whether you are such Creditors who are capable of Relief.

It must be granted, and it's the subject of pity rather than scorn, that many good Men may, and do insensibly sink and decay in their Estates, either by losses at Sea or Land, living up to support a Credit, and shoar up a Reputation (no mean Mystery in this World) or by the fatal and hidden determinations of Providence, which will sometimes baffle human designs, and will teach us not to ascribe Success always to our own Industry : And therefore frequently presents Instances to confirm the truth of the Wise Mans Observation, *The Battle*

## *The Preface.*

*Battle is not always to the Strong,  
neither Bread to the Wise, nor yet  
Riches to Men of Understanding.*

A Bankrupt, by Fraud, I always hated, I mean one that breaks on purpose to misse a Fortune by the ruin of others; tho' my Charity and Reason will induce me to believe such are not very ordinary. To leave a dear Family to the taunts and scorns of inconsiderate and insulting Fools, to roll about the World ones self like an Outlaw or a Fugitive, certainly are not things of choice, they are in no wise amiable. If such Monsters are to be found, I conceive our Laws are not severe enough against them. But I regret the proceedings against Bankrupts by Accident, (if we must allow of that distinction) and am sorry they are involved in the same Penalties.

But I must digress no further. I have only to add, My design in this is for the Publick Good of my Countrymen. And upon that score I must rely upon the Readers pardon  
for



### *The Preface.*

for my Mistakes : However, if he will  
be so inexorable as not to grant me  
a total discharge from my Errors, yet  
I hope my honest intentions may  
mollifie him into some reasonable  
composition for them.

T.G.

A

1871  
The first of the year  
was a very dry one  
and the crops were  
very poor. The  
winter was also  
very dry and the  
crops were very  
poor.

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missioners.*

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ER.

The Courteous Reader is desired to  
Correct these few Errors that have  
passed the Press.

## E R R A T A.

**F**olio 6. antepenult, add *many have*. f. 6. after line 25  
put 28, 29, 30 lines. f. 31. *Hench* r. *French*. f. 32.  
add *and Tompson Defendant*. f. 18. add *and French*. f.  
19. l. 1. add *sole Merchant*. f. 22. l. 14. *adjusted*, r.  
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*and*. f. 100. l. 13. before *Debts* add *the*. f. 104. l. 18.  
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T H E

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ave

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THE  
LAW  
Against  
BANKRUPTS.

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CHAP. I.

*Forms of the Affidavit, Petition, and  
Commission; with some short Re-  
marks.*

AS soon as you perceive your  
Debtor hath done or suffer-  
ed some Act, whereby he  
is become a Bankrupt within  
the Statutes of *Bankrupts*; in the first  
place the Creditors must make Affidavit  
before a Master in *Chancery*, Ordinary or  
Extraordinary, to this effect following:

H E

B

*'Affidavit*

*Affidavit to be made before a Master in Chancery, before the Suing out a Commission of Bankrupt.*

**A.** B. of, &c. maketh Oath, that R. B. of the City of L. Merchant, is truly and justly Indebted to this Depo-  
nent (and others his Creditors) in the sum of 100 l. and upwards; and that he is become a Bankrupt within the true meaning of one or some of the Statutes made against Bankrupts, as this Depo-  
nent believeth.

*Jurat.*

*A. B.*

Then there must be a Petition presented to the Lord Chancellor, or Lord Keeper, in manner following:

*The Form of a Petition to the Lord Chancellor, or Lord Keeper, to grant a Commission of Bankrupts.*

In most humble manner shew unto your Lordship,

**Y**our daily Orators A. B. of, &c. and C. D. of, &c. and W. L. of, &c. as well for themselves, as all other the Creditors of R. D. of the Parish of, &c. in, &c. Merchant: That whereas the said R. D. using and exercising the Trade of Merchandize,

chandize, by way of Bargaining, Exchange, Bartering and Chevilance, seeking his Trade of living by Buying and Selling upon good and just Causes, for Wares and Merchandize to him sold and delivered, and also for ready Mōny to him Lent, being indebted to your Oratōrs, and others his Crēditōrs, in divers and several sums of Mōny, amounting in the whole to the sum of, &c. and upwards: Of late, that is to say, about the Month of *November* last past, did become Bankrupt within the several Statutes lately made against Bankrupts, to the intent to defraud and hinder your said Oratōrs, and all others his Crēditōrs, of their just Debts and Duties to them due and owing, (that is to say) within the Statute, made in the Parliament begun and holden at *Westminster* the second day of *April*, in the Thirteenth year of the Reign of our late Sovereign Lady Queen *Elizabeth*, concerning Bankrupts; and within the Statute made in the Parliament begun and holden at *Westminster* aforesaid; the nineteenth day of *March*, in the first year of the Reign of our late Sovereign Lord King *James*, of *England*, *France* and *Ireland*, and of *Scotland* the seven and thirtieth; Entituled, *An Act for the better Relief of the Creditors, against such as shall become Bankrupts*: As also within the Statute made in the Parliament, begun

and holden at *Westminster* the nineteenth day of *February*, in the one and twentieth year of the Reign of our said late Sovereign Lord King *James*, of *England*; *France* and *Ireland*, and of *Scotland* the seven and fiftieth; Entituled, *An Act for the further description of a Bankrupt, and Relief of the Creditors against such as shall become Bankrupts*; or within some or one of them. In tender Consideration whereof, may it please your Lordship, to grant unto your Orators His Majesties most gracious Commission, to be directed to such and so many wise, honest and discreet persons, as to your Lordship shall seem meet; Authorizing them thereby, not only concerning the said Bankrupt, his Body, Lands, Tenements, Freehold and Customary Goods, Debts, and other things whatsoever; but also concerning all other persons, which by concealment, claim, or otherwise, do or shall offend touching the Premisses, or any part thereof, contrary to the true intent and meaning of the same Statutes. To do and execute all and every thing and things whatsoever, as well for and towards satisfaction and payment of the said Creditors, as towards and for all other intents and purposes, according to the Ordinances and Provisions of the same Statutes.

*And your Orators shall pray, &c.*

Note,



Note, The Creditors must name Seven Commissioners, (at the least) Commissioners (whereof how many. Two must be Esquires, for the *Quorum*) of whom the Lord Chancellor, or Lord Keeper, strikes out Two. This is the usual way; but many times, in Matters of great weight, there are Nine or more Commissioners, and Three or more of the *Quorum*.

If the Petition (which is to set forth the Time when he became a Bankrupt) do shew that he was a Bankrupt *1st June 18 Jac.* and the Commissioners find that he became a Bankrupt *1st November* following, yet its well enough; for it sufficeth that he is a Bankrupt, and the Time is not material, so it be before the Date and suing forth the Commission.

One sole Creditor shall not sue out a Commission; for it ought to be at the Commission; for it ought to be at the sued out by Suit of the Creditors; by Mr. Stone. *Q* one Creditor. But the daily Practise is the contrary, and so I perceive the Law to be; for it may so happen that the Creditor cannot have a satisfaction, but by a Commission: As in case the Bankrupt be Tenant in Tail of Lands and Tenements, or a Copyholder, which Estates may be sold by the Commissioners; which by no other means can the Creditor have for the satisfaction of his Debt.

The Bond to be entred in to the Lord Chancellor, or Lord Keeper, upon suing out the Commission of Bankrupt.

**N**Oberint universi per presentes me J. A. de, &c. teneri & firmie obligari perhonorabili G. &c. Domino Cancellario Anglie, solvend' eid' Domino Cancellario, aut suo certo Attorney Executozib', Administrac, vel Assignat' suis: Ad quam quidem solutionem bene & fidelie faciend' obligame Heredes, Executors, & Administratores meos firmit' p presentes. Sigillo meo sigillat' dat, &c.

**T**He Condition of this Obligation is such, That if R.B. of the City of L. Merchant, be a Bankrupt within all or any the Statutes lately made against Bankrupts, according as the above-bound A. B. by his humble Petition, exhibited to the above-named Lord Chancellor of *England* hath alledged: Then this Obligation to be void, or else to stand in full force.

I shall add the Form of a Commission, tho' you have it out of the Office, paying the Fees.

*The*

*The Commission is in this manner:*

**W**illiam and Mary, by the Grace of God, King and Queen of England, Scotland, France and Ireland, Defenders of the Faith, &c. To our trusty and well-beloved A. B. of E. in Com<sup>t</sup>, &c. Esq; C. D. of, &c Esq; R. S. T. S. and L. W. Gent. Greeting. Whereas we are informed, that J. R. of K. in, &c. Merchant, using and exercising the Trade of Merchandize, by way of Bargaining, Exchanging, Bartering and Chevisance, seeking his Trade, and of living by buying and selling (such a day and year) did become Bankrupt within the several Statutes made against Bankrupts, to the intent to defraud and hinder A. B. of, &c. and W. K. of, &c. and others his Creditors of their just Debts and Duties to them due and owing, we minding the due Execution, as well of the Statute touching Orders for Bankrupts, in the Parliament begun and holden at *Westminster* aforesaid, the second day of *April*, in the thirteenth year of the Reign of our Dear Sister *Elizabeth*, late Queen of *England*, made and provided: As of the Statute made in the Parliament, begun and holden at *Westminster* aforesaid, the 19 day of *March*, in the first year of the Reign of the late King *James* the First, of *England, France*

B 4

and

and Ireland, and of Scotland the 37th; Entituled, *An Act for the better Relief of Creditors, against such as shall become Bankrupts.* And also the Statute made in the Parliament, begun and holden at Westminster aforesaid, the nineteenth day of February, in the 21st year of the Reign of the said late King James the First, of England, France and Ireland, and of Scotland the 57th; Entituled, *An Act for the further description of a Bankrupt, and Relief of Creditors against such as shall become Bankrupts.* Upon Trusts of the Wisdoms, Fidelities, Diligence and provident Circumspection which we have conceived in you, do by these presents Name, Assign, Appoint, Constitute and Ordain you our special Commissioners, giving full Power and Authority unto you, Four or Three of you, whereof you the said A. B. or C. D. to be One, according to the same Statutes, and every or any of them, not only concerning the said Bankrupt, his Body, Lands, Tenements, Freehold, and Customary Goods, Debts, and other things whatsoever; but also concerning all other persons, which by Concealment, Claim, or otherwise, do or shall offend touching the Premises, or any part thereof, contrary to the true intent and meaning of the same Statutes, or any of them, to do and execute all and every thing and things whatsoever, as well

well for and towards satisfaction and payment of the said Creditors, as towards and for all other intents and purposes, according to the Ordinances and Provision of the said Statutes: Willing and Commanding you, Four or Three of you, whereof you the said A. B. or C. D. to be One, to proceed to the Accomplishment and Execution of this our Commission, according to the true intent and meaning of the same Statutes, with all diligence and effect, as our special Trust is in you. Witness our selves at Westminster the, &c.

If after Seizure, and before Distribution, all the Commissioners but Two die, Death of Commissioners. or if they of the *Quorum* die, they cannot proceed alone; but a New Commission must be awarded, and the New Commissioners may call the Old ones to an Account.

The words in the Statute 1 Jac. c. 15. Charges of the Commission. [For the Charges of the Commission,] are to be extended to all the Charges arising by the suing of it out, and in the Execution of it also. *Hutton*, fo. 38.

CHAP.

## C H A P. II.

*What Trade or Profession a man must be of, and profess: Or, what kind of Trader he must be, that brings him within the Statutes of Bankrupts.*

**I**N the next place I shall shew, how and when one may be said to be a Bankrupt; and what it is that makes a man become a Bankrupt.

- And as to that, it is to be considered;
1. What kind of Trade, Occupation, or Profession a man must be of, or what kind of Dealing he must follow, before he can be adjudged to be a Bankrupt.
  2. What Acts one must do, or permit and suffer, which will make him a Bankrupt within these Statutes, or any of them.

1. What kind of Trade, Occupation, or Profession a man must be of; or what kind of dealing he must follow, before he can be adjudged to be a Bankrupt.

Stat. 13 Eliz. c. 1. *If any Merchant, or other person, using or exercising the Trade of Merchandize, by way of bargaining, exchange,*

against Bankrupts.

41

exchange, re-change, bartry, chevifance, or otherwise, in gross or by retail; or seeking his or her Trade of Living by buying and selling, and being a Subject born of this Realm, or any of the Queens Dominions, or Denizen, shall depart the Realm; or begin to keep his or her House or Houses; or otherwise to absent him or her self, or take Sanctuary; or suffer him or her self willingly to be Arrested for any Debt or other thing, not grown or due for Money delivered, Wares sold, or any other just or lawful cause, or good consideration or purposes, will suffer him, or her self, &c.

Stat. 1 Jac.c.15. That all and every such person and persons, using or that shall use the Trade of Merchandize by way of bargaining, &c. prout in the Stat. 13 Eliz. cap.7.

Stat. 21 Jac. c. 19. That all and every person and persons using, or that shall use the Trade of Merchandize by way of bargaining, exchange, chevifance, or otherwise, in gross or by retail; or seeking his or her living by buying and selling; or that shall use the Trade or Profession of a Scrivener, Scrivener. receiving other mens Monies or Estates into his or their custody, shall be liable to be a Bankrupt.

Stat. 14 Car. 2. c. 24. Whereas divers Noblemen and Gentlemen, not bred up in Trade, have notwithstanding put great Stocks into the East-India and Guiney-Stocks in Company, it is declared, That no persons, Companies.  
Adven-

*Adventurers for putting in Money or Merchandize into the said Companies; or for adventuring or managing the Fishing, called the Royal-Fishing-Trade, shall be reputed or taken to be a Merchant or Trader within any Statutes for Bankrupts, or be liable to the same: Provided that persons Trading or Trafficking in any other way or manner, than the said Companies or Fishing, shall be liable to the Commission of Bankrupts.*

Observe, That by the Proviso in the later end of the Statute of 21 Jac. C. 19. That that Act, and all other Acts heretofore made against Bankrupts, shall extend to Strangers born, as well Aliens as Denizens, as effectually as to the Natural born Subjects; both to make them subject to the Laws as Bankrupts, as also to make them capable of the benefit or contribution, as Creditors by those Laws.

Attest.

*Notes, Cases, and Resolutions upon the Clauses of the said Statutes, relating to the Trade, Profession, or Occupation of such an one as shall be accounted a Bankrupt; and what shall be said a buying and selling within the Statutes.*

1 Note. **I**T is not buying and selling of Land, but of Personal things, that makes a man a Bankrupt, March Rep. 37.

2. Selling



2. Selling alone will not make a Bankrupt, unless he also buy, 2 *Keb.* 487. Nor Buying alone.

3. One single Act, tho' it let a man into a general Dealing, will not make one a Bankrupt. *Vid. infra.*

4. He that is a Bankrupt must get his living by buying and selling, or the chiefest part thereof. *Vid. infra.* Except in special Cases.

5. It must be a general Trade by which his livelyhood is got, and not particular Employments. *Vid. infra.*

Such as live on their Manual Labour Particular Employment. only, as Husband-men, Labourers, bare Handycrafts-men, &c. are not Traders within the Statutes, *Cro. Car.* 31. But,

Such as buy Wares, and convert them into saleable Commodities, and so get their livelyhood by such buying and selling, may be within the Statutes. As,

A Shoe-maker, that buys Leather and Shoe-maker. sells it in Shoes, may be a Bankrupt, *Cro. Car.* 31. *Crump and Barnes Case.*

So of an Iron-monger that buys Rod-Iron-monger. Iron or Bar-Iron, and causeth it to be work'd up into Wares.

So a Naylor, Lock-smith, &c. by the A Trading Smith. same Reason of a Shoe-maker.

A Clothier that buys the Wool, and Clothier. hath it made up into Cloth, may be a Bankrupt; so if he work it into Cloth himself, by the reason of *Crump's Case.*

A

Taylor.

A Taylor that makes Garments only and as Servant to his Customers, shall not be a Bankrupt. But,

Sales-man.

A Sales-man, by the reason of *Crumpled* Case, may.

Carpenter.

A Carpenter in *London* hath been adjudged a Bankrupt; but not *quid* a Working-Carpenter.

Mr. *Stone's* Opinion, p. 166. that a Shoe-maker, &c. is no Bankrupt, is no Law.

Inn-holder.

An Inn-holder *quid* such, is not within the Statutes, and may not be a Bankrupt by 3 *Justices* against *Berkly*: For though he buy Provisions to be spent in his House; yet he doth not properly sell it, but utters it at such Rates as he thinks reasonable Gains: And the Guests do not contract or take it at a certain price, but they may have it, or refuse it, and if he take excessive Rates, he is Indictable: And in cases of Inn-keepers Provisions are not only respected, but Furniture of Rooms, Attendants of Servants, &c.

Grazier.

But if an Inn-keeper be a Grazier, he may be a Bankrupt, *Grb. Car.* 548. *Criff* and *Platt. March Rep.* 35, 36. *mesme* Case. And likewise so lately Adjudged in the *Kings-Bench*, in the Case of *Trigg* versus *Newton*, an Inn-keeper at *Blossoms-Inn* in *London*.

Vintner.  
Brewer.

A Vintner may be a Bankrupt; or a Brewer.

A Farmer, who buyes in Cattle and Farmer.  
spends some, and sells others, is not a  
Bankrupt, *Gro. Car. 458. Marsh Rep. 35, 36.*  
But,

A Grazier or Drover may be a Bank- Drover:  
rupt; and whether he graze his own  
Land or not, alters not the case. Where-  
fore I wonder that Mr. Stone, p. 165.  
saith, *If he hireth Grounds, and feeds the*  
*Cattle, he shall be a Bankrupt; but not if*  
*he graze upon his own Freehold.* And it  
hath been since Adjudged to the con-  
trary.

A Cow-keeper at *Islington*, was lately  
Adjudged a Bankrupt.

An Husbandman is not within the Husbandman.  
Statutes, unless he be a Drover also:  
*Per Baron Donham 3 Car. at Wilts Af-*  
*fizes.*

Any Trading, tho' the Trade be ne-  
ver so Inferior in it self; yet if they get  
their living by buying and selling, and  
deal considerably in it, makes a Bank-  
rupt, with other acts of Bankruptcy.

One is not a Trader within these Sta- Leaving off  
tutes, who hath left his Trade, but sells Trade.  
his Goods lying upon his hands, for the  
Debts which he hath contracted after-  
wards; unless that the Debts were con-  
tracted during the Trade: But,

If such Persons Trade again, and so Trading again.  
become Indebted, he is a Bankrupt for  
this; but not for the Debts between.  
*Sir John Harrison and Sir Job Harvey's*  
*Cafe,*

Cafe, cited in Sir *Anthony Bateman's Cafe*, *Siderfin*, p. 411. So,

He shall become a Bankrupt for Debts due before he gave over Trading, and continued for new Security taken since he gave over his Trading, *Stone Lect. 7.*

Discontinuance of Merchandize is not an exemption from the Statute, when the Creditors have taken New Securities.

Debts owing  
when he was a  
Trader.

Therefore, its Resolved, it is not necessary he continue his Trade by buying and selling, to the time that he becomes a Bankrupt; but it sufficeth that he hath used the Trade, and during that time that he became Indebted, and for that Debt he is now become a Bankrupt. As if a Merchant leave his Trade, and go into the Country for two years, and after he absents himself from his Creditors, by reason of the Debts he owed when he was a Merchant, *Mich. 20 Jac. B. R. Hicroft and Hall's Cafe*. And the same was Agreed for Law in *Palmer's Rep. 325.* in Evidence to a Jury at *Kings-Bench*.

Partner.

If one for a time deal in a Trade, and after he forsakes his Trade; but leaves his Stock in the hands of another, and he hath part of the Gain, and is partaker of the Loss: If such an one after desert and conceal himself, he is a Bankrupt within the Statute, *Palmer's Rep. 325.* in the Cafe of *Hayler and Hale. Vid. infra.*

Sir

Sir *A. B.* had the 16th part in a Cole-ship, which Coleships are victualled and employed by the Owners. But it appeared when Sir *A. B.* purchased the said 16th part, the Ship was indebted to him (*viz.*) to Repairs, and it is their custom to repair them upon the Credit of their Bottom, and this Ship had not gained so much as to pay for her repairs. This makes not a Merchant Bankrupt, *Sinderfin* p. 411. *Sir Anthony Batemans Case.*

That Sir *A. B.* imported Goods in his own name, is not sufficient, unless he doth issue out the Proceed so imported, as he did employ goods taken in Prize in Revictualling another Ship, which made one a Bankrupt, altho' he was a Gentleman.

A Joint Stock is not sufficient, unless some disposition of it be actually proved as it is in *Sir John Wooltenholm's Case*, 14 Car. 2. c. 4. So tho' he be Partner of a Coleship, where the Freight and Ownership are not distinct, as in Ships Trading to other parts, 2 Keble, 487.

Sir *Tho. Littleton*, Mr. *Papillion*, and Mr. *Cbild* by contract with King *Charles 2.* were to victual the Fleet at 8d per diem a Head, who made an under-contract with the Purfers of the Ships (two of which, *viz.* Mr. *Gibson*, Mr. *Hench* were Plaintiffs) to victual at 6d per diem, and gave a Note of 800 l. at 6d per diem; and before this Contract Sir *Thomas* was

C

no

Particular Em-  
ployments.

no Trader, as was agreed; and *per Curiam*, this Contract to Victual a Fleet is no more than to Table with a private man, which will never make a Trader within this Statute; which looks on general Trades by which livelihood is gotten ordinarily, not on particular employments; for so the King's Butler or Steward, or any other Officer might be a Trader.

2. Altho' Provisions made for the Fleet, be by the King's direction, but applied to other purposes than was contracted, yet this is no more than a particular Command to a man to buy Provisions for that purpose.

Selling off a  
Surplusage.

3. It was resolved, that if under disguise of such contract, Sir *Thomas* trade with other Merchants under-hand or secretly; that shall be a Trading within the Statute. But the selling off a Surplusage is no more a Trading, than a Gentlemans selling off the Surplusage of Hay; and he must be a Buyer and Seller too, that is within the Acts. It's not sufficient to Buy alone, or Sell alone; and one single Act, tho' it let a man into a general dealing, will not make a Bankrupt, no more than a Commission of Excise, or a School-keeper that boards Scholars, or Stewards of the Inns of Courts, or Farmers of the Customs, *Gibson vers. Tompson. p. 27. Car. 2. B. R.*

Stewards. Farmers  
of Customs

A Feme

A Feme Covert Merchant may be a Bankrupt, and so shall her Husband be; it shall be accounted his folly to suffer his Wife to Trade as such, and the outlawry of the Husband for the Wives debt shall make him a Bankrupt.

Feme Covert-  
Merchant and  
her Husband.

By a Special Provision in 14 Car. 2. c. 14. Noblemen and Gentlemen, not bred up in Trade, that have put in Stocks into the *East-India* and *Guiney* Companies, and are adventurers for putting in of Mony or Merchandise into the said Companies, or for adventuring or managing the Fishing, called *The Royal Fishing Trade*, are not to be reputed Bankrupts. But persons trading or trafficking in any other way or manner, shall be liable to the said Commissions of Bankrupts. In the *Turkey* Company every man Trades on his own account and estate, and not like the *Guiney* Company or *East-India* Company.

Adventurers.

Now before this Statute of 14 Car. 2. was made, one Sir *John Woolstenholme* was one of the Corporation of the *East-India* Company, and a Gentleman of 3000 l. *per annum*, and had a Stock in the Company of his own, and sat in the Committee of the said Company as a Merchant in the management of Trade, and did receive at several times the Proceed of his Stock upon returns of Ships, and became indebted to divers persons, and absconded himself. It was held, that

A Gentleman;  
Trader.

tho' he did not get the greatest part of his Living by Buying and Selling, yet his Employment in the said Committee and Trade, was such a Buying and Selling, as brought him within the Statutes of Bankrupts, and that the Statute was to be taken largely for the Creditor against the Bankrupt, and his taking out of his Stock and Goods, and disposing them was a selling within the Stat. of 21 *Jac. Hughes grand Abridgment.* Sir *John Woolstenholms* Case. But this Verdict and Judgment against Sir *John* was reversed by the said Stat: 14 *Car. 2. c. 4.* but not to avoid any sale of his Lands made by the Commissioners.

*East India.*  
*Africa.*

*Virginia.*

If a man trade in the *East-India* Company, and in the *African* Company, or *Guiny* Company and abscond, &c. he is not within the proviso of this Statute, but shall be a Bankrupt. A *Virginia* Merchant is within the Statute, and so others.

CHAP.



CHAP. III.

*What Acts a Man must do, or suffer to be done, before he can be said to be a Bankrupt.*

13 Eliz. c. 7. **I**F any such Trader as aforesaid, shall depart the Realm, or begin to keep his or her House or Houses, or otherwise to absent him or her self, or take Sanctuary, or suffer him or her self willingly to be Arrested for any Debt or other thing not grown due for Money delivered, Wares sold, or any other Just or Lawful Cause, or good Consideration, or Purposes, or will suffer him or her self to be outlaw'd, or yield him or her self to Prison, or depart from his or her Dwelling-house or Houses, to the intent or purpose to defraud or hinder any of his or her Creditors, being also a Subject born as aforesaid, of the Just Debt or Duty of such Creditor or Creditors, shall be reputed, deemed and taken for a Bankrupt.

1 Jac. c. 15. — All and every such Traders (as aforesaid) that shall depart the Realm, or begin to keep his or her House or Houses, &c. (ulq;) or yield him or her self to Prison, or willingly and fraudulently shall procure him or her self to be Arrested, or his or her Goods, Money or Chattels to be Attach'd, or Sequestred, or depart from his or

her Dwelling-house, or make, or cause to be made any fraudulent Grant or Conveyance, of his, her or their Lands or Tenements, Goods or Chattels, to the intent, or whereby his, her or their Creditors, being Subjects born as aforeaid, shall or may be defeated or delayed for the recovery of their just and true Debts; or being Arrested for Debt, shall after his or her Arrest, lie in Prison six months or more upon that Arrest, or upon any other Arrest, or Detention in Prison for Debt, and lie in Prison six months upon such other Arrest or Detention, shall be accounted and adjusted a Bankrupt, to all intents and purposes.

21 Jac. c. 19. For the further description of a Bankrupt. — That all, and every such Trader (as aforesaid) who shall either by himself or others by his procurement, obtain any Protection or Protections, other than such person or persons as shall be Lawfully protected by the privilege of Parliament, or shall prefer or exhibit unto his Majesty, his Heirs or Successors, or unto any of the King's Courts, any Petition or Petitions, Bill or Bills against his or her Creditor or Creditors, or any of them, thereby desiring or endeavouring to compel or enforce them, or any of them, to accept less than their just and principal Debts, or to procure time or longer days of payment, than was given at the time of their Original Contracts; or being indebted unto any Person or Persons, in the sum of One Hundred Pounds or more, shall

shall not pay or otherwise compound for the same within six months next after the same shall grow due, and the Debtor be Arrested for the same, or within six months after an Original Writ sued out to recover the said Debt, and notice thereof given unto him, or left in writing at his or their Dwelling-house, or last place of abode; or being Arrested for Debt, shall after his or her Arrest lie in Prison two months or more upon that or any other Arrest or Detention in Prison for Debt; or being Arrested for the sum of One Hundred Pound or more of just Debt or Debts, shall at any time after such Arrest escape out of Prison, or procure his enlargement by putting in Common or Hired Bayl shall be adjudged a Bankrupt. And in the said cases of Arrest, or lying in Prison for such Debt or Debts, or getting out by Common or Hired Bayl, from the time of his or her said first Arrest.

*This Description consists of these several parts.*

I. **A**bsconding or withdrawing himself, and that is Four Ways.

1. By departing the Realm. Mr. Stone in his Lecture, puts this Case. If a man depart the Realm, and long time after his departure becomes *non solvent*, his absenting himself in such a Case brings him within the Statute of Bankrupts, p.

Departing the Realm.

133. It seems otherwise, For suppose a Wealthy Merchant goes beyond Sea with a good Cargoe, and states his Accounts with his Creditors, who know of his Voyage, and are pleased therewith, and he sends over several effects to them, and they trust him in the way of Merchant-factor; and after five or seven years space, he by Losses becomes *non-solvent*, and abides beyond Sea; I conceive this is not within the Statute. For the Statute of 17 Eliz. c. 7. saith, That this withdrawing or absenting, &c. must be on purpose to defraud his Creditors; and this can never be construed so; and we must imagin after his *non-solvency*, he must stay to get up his Eects.

Departure from  
his House.

Denial to be at  
home,

2. Departing from their Dwelling-houses. It need not be a total departure; for as it is rightly put, If one that hath an House, and yet absents for fear of Arrest, for a time, and then returns, yet he is a Bankrupt. Suppose a man hath no Dwelling-house, but sojourns sometime at one place, and sometime at another, yet if he appear not at his usual times or places of Trade as formerly, nor can be found as formerly, this is within the words of 13 Eliz. c. 7. or *otherwise absent himself*. So a Lodger in a Chamber. Yet Query: For if he sometimes absent himself, and at other times when he thinks himself safe from Arrests, appears publicly, as upon the open

open *Exchange*, this seems to be a purging of absenting or withdrawing himself before, as it was held in the Case of *Hind* the Banker, who was sometimes denied at his House, tho' within; yet afterwards appearing upon the open *Exchange*, 'twas held in that Case, that this appearing publickly purged such his denial or absence.

3. Keeping their Houses. 20 *Jac. B. R. Taylor and Hills* Case. It was resolved, <sup>Keeping his House.</sup> That the keeping within his House, unless to defraud and delay Creditors, makes him not a Bankrupt. But if he conceal himself for Debt, for which he is sued, and to delay and defraud his Creditors, tho' but for an hour, this makes him a Bankrupt. *Palmer's Rep. 325. Haylor and Hall.* Yet it is adjudged, *Croke, Eliz. Fo. 13.* — If a Trader, on notice of Process issued forth against him, keeps in to secure himself from the Arrest, and after goeth forth again; and then upon like notice keeps his House, and then goeth forth again, this brings him not within the Statutes; because he useth to go at large, and he may be met with one time or other. But *Quere* of this Resolution. For if this be Law, then I do not understand the words in 1 *Jac. c. 15. or begin to keep his or her House*: And also certainly this is a keeping in to delay and hinder Creditors, 17 *Eliz. c. 7.* If the keeping in be to defraud or delay the

the payment, he is a Bankrupt: And Serjeant *Stone* saith well, *Fo. 10.* If a Trader absents himself for fear of being Arrested by a Writ *de Excommunicato Cap.* Or if a Decree in Chancery be made against him to execute a Conveyance, and he keeps in, or withdraws himself for fear of being Attached for not performing the Decree; such withdrawing doth not make him a Bankrupt. *Alister*, Perhaps if such Decree had been for payment of Money, as it was held in the Case of one *Albyn*, a *Turky* Merchant. If a Church-warden (Trader) keeps the Church; that is either a keeping his House, or taking Sanctuary. So if a Miller keep in his Mill, that is a keeping his House.

4. Taking Sanctuary. These were priviledged places formerly, but now the Kings Officers may go into any place. If a Merchant abscond, and list himself a Dragoonier in the Kings Service, or buy a Captains place; yet a Commission may go out against him, this is no protection within the the Statute. If a Trader be prest into the King's Service, I conceive it otherwise.

II. The next part of the description is, about the Bankrupts being Arrested and Imprisoned : Which is either

{ *Voluntarie & permissive*, and fraudulent,  
Or,  
{ *Forced*, and so continuing in Prison.

I. Voluntary and permissive, 13 Eliz.

c. 27. *If any such Trader shall suffer him or her self willingly to be Arrested for any Debt, or other thing not grown, or due for Monies delivered, Wares sold, or any other just or lawful Cause,* 1 Jac. 15. Or shall willingly or fraudulently procure him or her self to be Arrested, 13 Eliz. c. 7. 1 Jac. c. 15. *If any such Trader shall yield him or her self to Prison; this is to be understood of voluntary and feigned Actions;* as running into the Kings Bench or Fleet.

Or shall suffer him or her self to be outlawed. 13 Eliz. c. 7. 1 Jac. c. 15. *Outlawry.* One Outlaw'd in Ireland, is not thereby a Bankrupt here; for that the Record is not pleadable here, *Stone* 172. Now the Reason of this Clause is, because by the Outlawry the King is intitled to the Goods, and so seems to be a fraud to the Creditors, which the Law abhors : But if the Debtor reverse the Outlawry, before the Commission of Bankrupts sued out, it seems otherwise, as Mr. *Billinghurst* conjectures. If it be Reversed for want of

of Proclamations, all done in the mean time by the Commissioners is void.

If the Jury or Special Verdict, find a Bankrupt Outlaw'd, they must find he was outlawed in *Fraudem Creditorum*, and to that intent, 1 Keb. 11. *Bradford's Case*.

2. Forced Arrest or Imprisonment; and there the description is this: 1 Jac. c. 15. If such a Trader (as aforesaid) being Arrested for Debt, shall after her or his Arrest lie in Prison six Months or more upon that Arrest, or upon any other Arrest, or Detention in Prison for Debt, and lie in Prison six Months upon such Arrest or Detention, shall be judged a Bankrupt. 21 Jac. c. 19. If any such Trader (as aforesaid) being indebted unto any Person or Persons in the sum of 100 l. or more, shall not pay or otherwise compound for the same within six Months next after the same shall grow due, and the Debtor be arrested for the same; or being Arrested for Debt, shall after his or her Arrest lie in Prison two Months or more upon that or any other Arrest or Detention in Prison for Debt; or being Arrested for the Sum of 100 l. or more of just Debt or Debts, shall at any time after such Arrest escape out of Prison, or procure his Enlargement by putting in Common or Hired Bail, shall be adjudged a Bankrupt; and in the said Cases of Arrest, or lying in Prison for such Debt or Debts, or getting out by Common or Hired Bayl from the time of his, or her said first Arrest.

Ob.



Observe this difference,

If such Trader owe 100*l.* and upwards, and doth not pay or compound for the same, within six Months next after the same shall grow due, and the Debtor shall be Arrested for the same, he is a Bankrupt, *per 21 Jac. 19.* But a Clause comes after, And being Arrested for Debt, shall lie in Prison two Months and more; which includes as well under as above an 100*l.* So that if a Statute-trader owes me 100*l.* and doth not pay it or compound for it within six Months after its due, and he be Arrested for it, this makes him a Bankrupt; and if he owe me 20*l.* and shall be Arrested for it, and lie in Prison two Months, this makes him a Bankrupt. *Durus Sermo.* The Act saith, if he do not compound; suppose his Creditors will not, then he must of necessity lie in Prison; (*upon any other Arrest or Detention for Debt.*) I conceive the meaning of these words are, for Debt originally, and not Debt by reason of a Fine imposed, &c. For the Statute hath respect to Creditors, either by way of Contract, Exchanging, Buying, &c. and not Fines or Amerciaments, &c. which no way respect Trade. (*or shall lie in Prison after his or her Arrest two Months or more, on that or any other Arrest, or Detention in Prison for Debt*) on which I will put this Case. One owes 100*l.* and is Arrested and Imprisoned,

prisoned, and in a Fortnights time pays it; and during that Fortnight another Action of 100*l.* is entred against him, and he pays that in a Fortnights time after; and so another Fortnight he pays a third Action off. *Quere* if this be within the Statute lying two Months or more on that or any other Arrest. I conceive not. For by that payment he is discharged from that Debt, and so not in Prison on that account.

But the Case which Mr. *Billinghurst* puts. Suppose (saith he, *p.*—) a man be Arrested upon a Bond before the day of payment, as by the Custom of *London* he may, and lie in Prison two Months, &c. The *Quere* is, whether this be such an Arrest for Debt as is within the Statute. It seems doubtful. For tho' it be *debitum in presenti*, and so a release of all Debts shall extend to it; yet it is not properly a Debt within the words or intent of the Statute, for that must be such a Debt for which a Cause of Action is given; and there can be no cause of Action properly, till the forfeiture, for the Obligation is guided by the Condition; and the Custom of *London* will not help it: For the Custom is not, that he shall be Arrested for the Payment of the Money, but to find better Sureties. And the Statute only intends Detention in Prison for a just Debt really due. But I submit my reason to the Judicious Reader.

Mr.

Mr. Stone puts a Question. If a man remaining in Prison six Months at the Suit of the King, makes him a Bankrupt? It may be Answered, if it be for a Debt, it doth; if on a Criminal Matter it doth not.

The next part of the Description is,

21 Jac. c. 19.

If such a Trader being indebted unto any person or persons, in the Sum of One Hundred Pounds or more, and shall not pay or otherwise compound for the same within six Months next after the same shall grow due, and the Debtor be Arrested for the same, or *within six Months next after an Original Writ sued out to recover the said Debt, and notice thereof be given unto him, or left in writing at his or their Dwelling-House, or last place of abode.* After an Original Writ sued out. This is plain, and needs no explanation. It was resolved in the Court of Kings Bench, on a Tryal against Sir Anthony Bateman, Term. Mich. 1671. That one may become a Bankrupt, by reason of a Suit in the Exchequer, altho' the Statute speaks only of Original Writs; for the Statutes shall have a beneficial construction. *Per Hales.*

The next is per Stat. 21 Jac. c. 19.

*If such Trader (as aforesaid) being Arrested for the Sum of 100l. or more of just Debt, shall at any time after such Arrest escape out of Prison, or procure his Enlargement.* Escape. Common Bayl.

ment by Common or Hired Bail, he shall be adjudged a Bankrupt; and in the said Cases of Arrest, or lying in Prison for such Debt or Debts, or getting out by Common or Hired Bail, he shall be adjudged a Bankrupt from the time of his first Arrest.

Suppose one so Arrested lies in Prisons three Terms, and no Declaration comes in against him, and he by course of Law is let out at Common-Bayl, *Quere*, if he be within the Statute: for that is a Legal Course; and the word (procure) in the Statute is taken in *malam partem*.

Protections.

The next is, per 21 Jac.

If such Trader shall by himself, or others by his procurement, obtain any Protection or Protections, other than such person or persons as shall be lawfully protected by the privilege of Parliament, shall be adjudged a Bankrupt.

This is plain, All Protections are within this Statute, except Parliament Protections duly obtained.

Petition to compound or procure time.

The next is,

Or if such Trader shall prefer or exhibit unto his Majesty, his Heirs and Successors, or unto any of the Kings Courts, any Petition or Petitions, Bill or Bills against his or her Creditor or Creditors, or any of them; thereby desiring or endeavouring to compel or enforce them, or any of them to accept less than their just and principal Debts; or to  
procure

procure time or longer days of payment, than was given at the time of their Original Contracts, shall be adjudged a Bankrupt, Statute 21 Jac. c. 19.

But if the Debtor call his Creditors together, and they grant him License for longer time, this Act makes him not a Bankrupt; this is no fraud, nor intention to defraud.

The last part of the description is about Frauds; and that is in two Paragraphs.

1 Per Stat. 1 Jac. 15. *If such Trader* <sup>Fraud as to Goods.</sup> *(as aforeſaid) ſhall willingly or fraudulently procure his or her Goods, Mony or Chattels to be Attached or Sequeſtered, ſhall be adjudged a Bankrupt.* But then note, That this muſt be of the Parties immediate procuring, and not by his meer Default or Latchefs. For the words of the Statute are *willingly and fraudulently*; therefore Mr. Stone, p. 172. is right in this Caſe. A Merchant, &c. hath an Improprate Rectory; the Choire is not repaired, the Tythes are ſequeſtered; it is no Sequeſtration within this Statute; for tho' this is his default in not repairing the Church, yet it is not of his immediate procuring. So in Caſes of other Attachments out of any Court.

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2. Per

*The Law*

2. Per Stat. 1 Jac. 15. *If any such Trader shall make, or cause to be made any fraudulent Grant or Conveyance of his, her or their Lands or Tenements, Goods or Chattels, to the intent, or whereby his, her or their Creditors, being Subjects born (but Per 21 Jac. it extends to all Strangers) shall or may be defeated or delayed for the recovery of their just and true Debts, shall be adjudged a Bankrupt.*

But for the further explication of this last Paragraph about fraudulent Sales and Conveyances, I shall shew

What Sales and Conveyances, made by the Bankrupt, shall be said to be fraudulent within this Statute, and what not; I mean as to make him a Bankrupt: for as for what Conveyances shall be adjudged fraudulent in this Statute in reference to Purchasers, I shall consider afterwards.

And they may be considered two ways.

1. Either such as are made long before he becomes a Bankrupt. Or,
2. Such as are made some short time before; for what is done after the time of Bankruptcy is totally void.

But first I shall observe any one single Act of these descriptions is sufficient to make

make such Trader ( as aforesaid ) a Bankrupt. And that ( as by the Preamble of the several Statutes against Bankrupts it appears ) the main intent of the Statutes is to relieve Creditors against Frauds and Deceits ; tho' in some of the forementioned descriptions a delaying of Creditors is provided against, as the lying in Prison six Months, or two Months, or not paying or compounding, *per 21 Jac. &c.* yet Fraud and Cheat lies, or should lie at the bottom of all ; and I understand not the distinction of a Bankrupt by Fraud, and a Bankrupt by Accident, which I find in some of our Books, as the Laws have been expounded.

Any Fraudulent Conveyance within the Stat. 13 *Eliz.* & 25 *Eliz.* is within this Clause. But I shall not stand upon the explication of those two Statutes, it being a distinct Head from my present purpose ; but shall come to set down some Cases, wherein Conveyances and Sales, made by the Bankrupt, have been adjudged Fraudulent, and which make him such.

If a Trader, finding himself sink in his Estate, and doth make a Conveyance of all his Lands and Goods to Trustees for the payment of his real Debts, and then absents ; yet this Conveyance, tho' it may be truly and honestly made

and intended, shall not excuse him; for his very absconding makes him a Bankrupt: But if he abscond not, but declares his intention to pay his Debts, and the Trustees act accordingly, and pay as far as it will go proportionably, this Conveyance, without other act shall not make him a Bankrupt; for here is no fraud.

*Of Settlements voluntary.*

R. B. 9 *Jac.* Purchased Copyhold-Lands to him and his Son for their Lives, the Remainder to the Wife in Fee, 11 *Jac.* he became an Inholder; and about twelve years after, a Commission of Bankruptcy is awarded against him, and the Commissioners sell the Copyhold-Land. R. B. dies, his Son enters and made a Lease to the Plaintiff, the Defendant entered upon him, and he brought *Ejectione Firma*.

1. *Per Cur.* An Inholder is not a Bankrupt. 2. In this Settlement there does not appear to be fraud apparent, and none being found, the Plaintiff had Judgment.

If a man make such a voluntary Settlement, and be indebted at that time, he shall be an Offender within this Statute of 13 *Eliz.* The words in the last Proviso of that Statute are, *Provided always, that this Act shall not extend to any Lands,*



Lands, &c. Free or Copyhold, which shall be hereafter assured by any Bankrupt before he became a Bankrupt: So always that such Assurance be made *bonà fide*, and not to the use of the Bankrupt himself, or his Heirs; and that the Parties to whose use such Assurance shall be made, be not at, or before the making such Assurance, privy or consenting to the fraudulent purpose of any such Bankrupt to deceive his Creditors. But if he be not indebted at the time, if he purchase for another, and give unto another; if no fraud be found, it is not within the Statutes; or else Lands purchased forty years before might be defeated, *March. Rep. 34. Crisp. & Platt.* this Case is well reported by *Croke Car.* 548, 549, 550. this Land was given by the Father (six years before he became a Debtor) to his Son, and no fraud found (being on a special Verdict) altho' there be circumstances of a fraud by the sole taking the Profits, untill he became a Bankrupt.

It is reported in Justice *Hutton*, That Every Deed made to defraud other Creditors (but those to whom it is made) is not sufficient to make one a Bankrupt. But if he make any Deed after he begins to be a Bankrupt, that shall not bind, *per Stat. 1 Jac.* which makes him a Bankrupt, that makes a fraudulent Deed: It must not be made long before he becomes a Bankrupt, *Hutton. 42,*

43. 1 Croke 13. March. 34. The Case was,

A Merchant had made a fraudulent gift of his Goods to the Defendant, but afterwards he went to Church and Exchange, and did Trade and Commerce, yet it was contained in the Indenture of the Commissioners to the Plaintiff, that he had made this fraudulent Deed, and that he had traded till a day after, at which day he absented himself, and the Defendant had Judgment in *Trover* upon this Verdict, *Causa qua supra*. The Statute 1 Jac. that makes him a Bankrupt that makes such a Deed of Fraud, must not be as this Case is (*viz.*) so long before he becomes a Bankrupt, *Hutton* 42. *Cartright & Underhill*. But I conceive the Law is contrary to this resolution, and the case is misrepresented.

Of fraudulent Deeds and Settlements, in reference to Purchases, *vide infra*.

Of a mans becoming twice a Bankrupt.

Note. In the Case of *Jollyser & Horn, Hill* 1657. in *Com. B.* The Commission was sued out within five years after he became a Bankrupt, and it was confessed he was a Bankrupt in 1641. but it was said he became a Bankrupt again in 1649. And

And *Hales* puts this difference, that if one become a Bankrupt by a transient Act, as *suit*, &c. he may again become a Bankrupt; but if by a Continued Act, as Imprisonment, withdrawing himself, &c. he may not become a Bankrupt again; so with this difference you may understand how it is said, once a Bankrupt and always a Bankrupt.

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#### CHAP. IV.

*Rules for the Constructions of the Statutes, and when the Bankruptcy shall be said to Commence.*

THE Statutes having made a full description of the Bankrupt; do then order how, and in what manner the Commissioners shall act. Before we fall directly upon that, I shall name two or three things out of these Statutes which are necessary and useful to be known. As,

Note 1. *Per Stat. 21 Jac. c. 19.* These Statutes of Bankruptcy are favourably to be construed for the Creditors, being made for the suppression of Fraud. *Vide* this explained in many Cases hereafter;

D 4

and

and yet this should not be too far extended. For the Statutes are highly penal, and my Lord Bacon's Remark is good, *It is an hard case to torture Laws, that they may torture Men.*

Alien.

Note 2. By Stat. 13 *Eliz.* He that is a Bankrupt must be a Subject born in the King's Dominions or Denizen.

One is born in the *Isle of Man*. Mr. *Stone* seems, that he cannot be a Bankrupt, because it hath been adjudged that it is not parcel of the Realm. But without dispute it is within the Kings Dominions; and the King grants it to a Subject, and by the precedent Rule the Statute must be construed favourably for Creditors.

A Denizen of *Ireland* may be a Bankrupt within the intent of the Statute.

One born in a Ship on the Coast of *Flanders*, may be said to be born in the Kings Dominions.

If the Husband be an Alien, and the Wife a Subject; or the Wife an Alien, and the Husband a Subject; by Mr. *Stone* it's all one as to Goods, they are both within the Statute, but the Lands are the Kings. Yet I cannot conceive, that if an Alien marry a Subject Woman, of a great Fortune, that he can be within the Statute, for he is no Subject nor Denizen; and in such case I never heard of a naturalization by an Apron-string.

But

But by the Proviso in 21 *Jac.* c. 19. <sup>Alien;</sup> That Act, and all other Acts made against <sup>Denizen.</sup> Bankrupts shall extend to Aliens, and they shall be subject to the Laws as Bankrupts, and capable of the benefit as Creditors.

Note 3. When the Commission is to be sued out, and the effect of it; by the Statute 21 *Jac.* It is provided, that no Purchaser, for good and valuable consideration, shall be impeached by vertue of any of the Statutes of Bankrupts, unless the Commission to prove him or her a Bankrupt, he sued forth against such Bankrupt, within five years after he or she shall become a Bankrupt. In other Cases I find no time limited for the taking out the Commission; tho' its without doubt the sooner the better for the Creditors. *Vide postea Tit.* Settlement, Purchasers; and the Proviso, that the Commission must be sued within five years after some time when he became a Bankrupt, 1 *Kebl.* 12. *Bradford & Bludworth.*

Note 4. From what time the Bankruptcy shall commence, per Stat. 21 *Jac.* c. 19. *If any such Trader (as aforesaid) being Arrested for one hundred pounds, or more, of just Debt or Debts, shall after such Arrest escape out of Prison, or procure his Enlargement by Common or Hired Bail; he shall be adjudged a Bankrupt from the time of his first Arrest.* Also by the said Statute,  
If

If such Trader, being indebted unto any person or persons in the sum of 100 l. or more, shall not pay, or otherwise compound for the same within six Months next after the same shall grow due, and the Debtor be arrested for the same, he shall be adjudged a Bankrupt from the time of his said first Arrest. For the Statute saith in the said Cases of Arrest, or lying in Prison.

But the Statute doth not mention in the Case of Escape. Yet I conceive it is within the intention, the escaping being a more notorious offence than the others.

*Per Stat. 21 Jac.* A man is only a Bankrupt by relation from the time of his Arrest; when he makes an escape, or comes out upon Common Bail.

A Merchant is imprisoned, and after becomes a Debtor to *A*, and then the six Months pass, *A* is relievable as a Creditor, for he is not a Bankrupt by relation, *per Mr. Stone, p. 182.*

How a Bankrupt is to be accounted from the first Act of Bankruptcy. *Vide infra Cap. 8. Radford & Bludworth's case & Spencer & Vanacres, case.*

C H A P. V.

Of Creditors.

*Who are Creditors within the Statute, and who are not. Of their Preference. Of their coming in, and within what time they are to come in, or their refusal; and of Contribution to the Charges. And the Form of an Authority to receive Contribution Money.*

*Who are Creditors within the Statute, and who not.*

**A** Merchant enters into a Statute Conisee. or Recognisance; the Conisee is a Creditor, and must come in and contribute, or else he shall have no relief.

An Executor becomes a Bankrupt, a Legatee. Legatee shall be relieved as a Creditor.

Mortgagee is not a Creditor within Mortgagee: the Statute, and need not come in; for he is provided for by the Statute. So a Merchant pledgeth Goods, and becomes a Bankrupt, the party need not come in.

As well Aliens as Denizens may come Aliens. in as Creditors, *per Stat. 21 Jac. c. 19.*

A Surety

Sureties.]

A Surety may come in as Creditor. O. & B. are Sureties for J. S. for the payment of Money; and had Counterbonds from J. S. to save them harmless: The Money was not paid at the day. O. and B. the Sureties pay it. J. S. after becomes a Bankrupt, *Per Curiam*. O. & B. are Creditors within the Statutes, *Croke, Jac. 127. Osborn & Churchman*.

Debt not due.

One hath a Debt not yet due, yet he shall be relieved with rateable respect of abatement for the time.

Recoverer of Damages.

Mr. Stone saith, One that recovers damages in Waste or Trespas, shall not be relieved as a Creditor; *Quere*, if that be Law? For in *Benson & Flowers Case. Jones Rep. fo. 215.* A man recovered Damages in an Action on the Case for Words, and became a Bankrupt, after Judgment, when it is reduced to a certainty, it may be assigned. By the same reason, if the Plaintiff recover Damages against the Defendant, and hath Judgment, and the Defendant becomes a Bankrupt, the Plaintiff is a Creditor: It is a Debt due to him, and Action of Debt lies upon the Judgment. *Quere.*

He that hath the Defendants Body in Execution.

The Plaintiff that hath the Defendants Body in Execution, shall not come in to be relieved. But if he have his Body in Execution on a Statute Merchant, *aliter*, per Mr. Stone. *Quere.*

Bail.

A. is Bail for B. either to bring his Body, or to pay the Condemnation-money.

B. be



B. becomes a Bankrupt, and absents, A. pays the Mony, he may come in as Creditor.

If one trust a Bankrupt, after he be-comes a Bankrupt, he shall not be relievable as a Creditor. Trusting a Bankrupt.

*Vide infra, The Case of Craven and Knight in Chancery.*

A Statute extended upon a Bankrupts Lands, before the *Liberate* filed, Lord Chancellor ordered to take like composition with other Creditors. *Overman against Wright, Hill. 17 Jac. li. B. fo. 807.*

Per Stat. 21 Jac. It is enacted, *That all, and every Creditor and Creditors, having security for his, or their Debts, by Judgment, Statute, Recognisance, Specialty with Penalty, or without, or having no security, or having made Attachment in London, or any other place, by vertue of any Custom, there used, of the Goods and Chattels of any such Bankrupt, whereof there is no Execution or Extent served and executed upon any the Lands, Tenements, Hereditaments, Goods, Chattels, and other Estate of such Bankrupt, before such time as he, or she shall, or do become a Bankrupt, shall not be relieved upon any such Judgment, Statute, Recognisance, &c. for any more than a rateable part of their just and due Debts with the other Creditors of the said Bankrupt, without respect to any such penalty, or greater* Judgmentees, Conusees and Attachers by Foreign Attachment to come in as Creditors for their share.

greater sum contained in any such Judgment, Statute, Recognisance, &c. Of Foreign Attachment, *Vide infra*.

Of Preference.

**T**HE Bankrupt cannot prefer one Creditor before another, 2 Rep. 23.

The King.

The King shall be preferred before a private person by the *Stat. 21 Jac.* But one part shall be allotted to him by the Commissioners, according to the proportion that other Creditors have. Sir *Simon Nevells Case*, *Hill. 3. Car. 1. & Pasch. 1650. Pickering's Case*.

It was moved in *Monck and Claytons Case*, 3 *Keb. 68. & p. 14.* That Mony of the Plaintiffs being a Bankrupt, and an immediate Debtor to the King by returns of Monys from the Commissioners of Excise, might not be delivered out of Court, to the Assignee of the Commissioners of Bankrupts, *Sed non allocatur*. But the Mony was ruled to be delivered to the Assignee, and that the King may by *Scire Fac.* recover it against them.

As to the Case of the King, when the King hath Title at Common Law, as by Outlawry, &c. and the Subject Title by Act of Parliament, as in this Case of the Creditors, which shall be preferred, *Vide infra, sub Titulo Assignment*.

Of

Of Creditors coming in, and of Contribution.

*Per Stat. 1 Jac. c. 17.* **I**T is Enacted, That it shall be Lawful for any of the Creditors of the said Bankrupt within four Months after any such Commission shall be sued forth, and until distribution shall be made by the said Commissioners for the payment of the Bankrupts Debts, as in such Case hath been used, to partake and join with the other Creditors, that shall sue forth any such Commission for satisfaction and payment of his, her or their Debts, to him or them owing, without any Hindrance, Let or Disturbance of any of the same Commissioners, or of any of the other Creditors, or of any such Bankrupts; the same Creditors so coming in to contribute to the Charges of the said Commission; and that if the said Creditors come not in within four Months, then the Commissioners to have power to distribute.

If certain Creditors sue a Commission, and others within four Months or more being Creditors, come before distribution, and will join in the charge of the Commission, and all that belongs to it, and tender their parts, they shall not be refused, but have their equal parts as Creditors. But if any Distribution be made of any part of the Estate, no Creditors are to be admitted after, that come  
not

not in before, *Hobert* 287. *Hutton* 37. *Rugles Case*. So that they may come in at any time before distribution.

## Refusal.

A Merchants Factor refuseth to come in as a Creditor, but claims Goods given to him by the Bankrupt in satisfaction of his Debt, since he became Bankrupt, he shall not have any thing in the Distribution.

## Notice of the Commission.

Every Creditor may take notice of the Commission, it being matter of Record, and so must take care to come in in time, 2 *Rep.* 26. b. *Cullamers Case*. But it is a good Custom now to give publick notice in the Gazets, or filing such Notice at *Guild-Hall*, or the *Exchange*, or such publick places.

## Contribution,

The offer of Creditors to be joined, and before they be partakers, is not an effectual offer, without offering to be Contributory to the Charges; but to offer any particular sum is not necessary. *Hutton.* p. 38.

*In Canc. inter Fuller & al' contra Lance & al' Hill.* 14. *Car.* 1. A Bankrupt makes an agreement with his Creditors, and after breaks the same; some of the Creditors take out a Commission, and after seven Months assign the Estate; and other Creditors who have notice of the Commission, prefer their Bill to have the Agreement performed, or be admitted to an equal dividend, but they were denied relief.

The

*The Form of an Authority to receive Contribution Money.*

**M***Emorand<sup>o</sup>*, We whose Names are hereunto subscribed, being the major part of the Commissioners, named and Authorised by the King and Queens Majesties Commission, grounded upon the severall Statutes made concerning Bankrupts awarded against *J. S.* do hereby think fit, and order by, and with the Consent of the Creditors of him the said *J. S.* whose Names are subscribed (*tho' this is not necessary*) that the said Creditors of *J. S.* who are all willing to come in and pay Contribution-mony towards the charges of suing forth and prosecuting the said Commission, and discovering and recovering of the Estate of the said *J. S.* Such Creditors that have already, or shall hereafter come in to the said Commission in due time, and seek relief thereby, shall and are hereby ordered to pay the sum of ——— in the pound for Contribution-mony, for every of their severall Debts which they claim to be due and owing to them by, and from the said *J. S.* And we likewise further order and think fit, that the said Contribution-mony be paid into the hands of *A. B.* of *&c.* who is appointed hereby to receive the same, and to

E                      disburse

*The Law*

disburse the same, as he shall be by us directed, and as occasion shall be.

It would be convenient that the Commissioners take Bond of the Treasurer of the Contribution-money, to disburse as he shall be by them directed, and to render a due account of all his Receipts, Payments and Disbursements.

Of Distribution, *Vide infra.*

CHAP.

CHAP. VI.

*Of the Proceedings of the Commissioners. The Form of the Oath. Of the Stile of the Depositions, Of declaring him to be a Bankrupt. Inhibition. A Warrant for Witnesses. A Warrant to send one to the Goal who refuseth to be sworn, or to answer; and of Proof of Debts.*

**H**AVING considered the Statutes, and cited many excellent Cases, and Resolutions of the Judges, what it is that makes a man become a Bankrupt, in reference to his Trade or Profession, and his Acts or Omissions, and who are Creditors, and what they must do if they will be relieved; I shall now come to treat of the behaviour and management of the Commissioners in this most weighty and important Concern.

The Commissioners in the first place summon Witnesses to appear before them, or rather they have them generally provided ready by the Creditors, to examine first, as to his Dealing and Trade, and then as to his Absconding, Fraudulent Deeds, Imprisonment, or other Acts which bring him within the

Statutes. And for the better Certainty and Evidence, they take the Depositions of the Witnesses in Writing.

The Form of the Oath to be Administred to the Witnesses upon their Examination.

**Y**OU are here produced as a Witness, by vertue of a Commission out of the High Court of Chancery, to us, and others directed, to be by us examined concerning the Bankruptcy of A. B. late of—&c. Now to such Questions and Interrogatories as shall be propounded and administred to you concerning the said A. B. his Trade or Profession, his Absconding, and other Acts which he hath done or suffered, by which he may discovered to be a Bankrupt; and also concerning his Lands and Tenements, Goods and Chattels, Debts and Duties, Frauds and Concealments, and other matters and things in obedience to the said Commission, and pursuant to the several Statutes made concerning Bankrupts, you shall true and direct Answer make, and swear the Truth, the whole Truth, and nothing but the Truth, So help you God. Or you may put the Form of the Oath shorter if you please.

*The*



*The Stile of the Depositions.*

**E**Xaminations and Depositions of Witnesses, and other Proceedings, had taken and executed the      day of, &c. in the Second Year of the Reign, &c. *Anno. Dom.* and at other times and places by Adjournment by *W. W. Esq;* *S. M.* and *C. L.* by Vertue of the King and Queens Commission of Bankrupts under the Great Seal of *England* (grounded upon the several Statutes made concerning Bankrupts) bearing Date at *Westminster* the      day of &c. and awarded against *J. L.* of &c. and directed to *W. W. Esq;* *R. P. Esq;* *S. M. L. C.* and *A. B. Gent.* Commissioners thereby appointed for the Execution thereof, or any four or three of them as followeth.

After the Depositions of the Witnesses to the Trade or Profession, and to the Offence or Acts committed or suffered; sometimes the Commissioners sign a short Memorandum to this purpose.

Upon the Evidence and Examinations aforesaid, We whose Names are subscribed, being the major part of the Commissioners appointed for the execution of this Commission, do conceive that the aforesaid *T. L.* the      day, &c. was, and

Declaring him  
a Bankrupt.

E 3      did

did become a Bankrupt within all, or some of the Statutes made concerning Bankrupts ; and accordingly we declare him to be a Bankrupt, and to have been so from that time.

But the Commissioners are generally cautious in declaring the Bankruptcy from a certain time, but leave it to a Trial at Law, in case there be any Question or Doubt of it ; and this for their own security against Actions that may be brought against them.

Note. The declaring of the Commissioners whether he be a Bankrupt or not, doth not acquit him or charge him, unless in truth it were so. *2 Siderfin, 176.*

Then let the Commissioners issue out their Inhibition to all persons who are, or have been Debtors to the Bankrupt, or have had dealings with him, or have any of his Goods and Effects in their hands, not to pay any of their Debts, or deliver any of the Goods to him, or his Order. The Form of which Inhibition you may soon frame, or repair to a Gazette.

It is convenient to fix this in some publick place of the Town or Towns adjacent where the Bankrupt lived ; and let them give notice to the Creditors to prove their Debts.

As

As to the proof of Debts. The Commissioners must swear the Creditors which will come in, of the Truth and Value of the Debts due to them.

The Form of the Oath for proving a Debt.

**Y**OU shall swear that A. B. late of, &c. at the time of his becoming a Bankrupt, was justly, and Bona Fide indebted to you in the sum of                      and that you have not since been any ways paid or satisfied for the same, or any part thereof.

Debts proved upon Oath by the Creditors, as followeth.

Let every man subscribe his Debt.

Be sure to observe and enquire if the Debts were contracted during the Trade.

*Vide of this more infra.*

*A Warrant from the Commissioners for Witnesses.*

**W**Hereas the King and Queens Majesties Commission under the Great Seal of England, bearing date the &c. last past at Westminster, grounded upon the several Statutes made concerning Bankrupts, hath been awarded against A. B. of &c. and directed to us,

E 4

who

who have hereunto subscribed our Names, and put our Seals; and to *B. &c.* (*here name the rest of the Commissioners*) And we being the major part of the Commissioners therein named, having taken upon us the execution of the said Commission; and it appearing to us, upon good and sufficient proof, That the said A. B. hath for several years last past gained his living by buying and selling of Cattel, Malt and other Merchandise, and thereby became indebted to several persons in the sum of one hundred pounds and upwards; and whereas upon good and sufficient proof to us made, we have adjudged the said A. B. to be a Bankrupt to all intents and purposes, within the true intent and meaning of the said several Statutes made against Bankrupts, some, or one of them, before the suing forth of the said Commission. And whereas we are credibly informed, that you whose Names are hereunto subscribed, are necessary Witnesses for the discovery of the said A. B. and his Estate: These are therefore in their Majesties Names, and by vertue of the Statutes and Commission aforesaid, to Will, Require, Charge and Command you, and every of you, whose Names are subscribed; That you be, and personally appear before us, at the House of D. E. situate, *&c.* upon *Tuesday* the       day of this instant Month of       by eight of the  
the

the Clock of the same day ; then, and there to Answer such Questions and Interrogatories as shall be then, and there demanded of you, and administred to you concerning the said A. B. and his Estate ; whereof you are not to fail, under the penalties, in and by the said Acts provided against Contemnors of the said Authority. Given, &c.

Having served those Persons you intend for Witnesses with this, leave an Abstract of it in writing with them severally. As thus,

E S.

**Y**OU are hereby summoned personally to be, and appear before the Commissioners, on *Thursday*, the day of instant by Nine of the Clock in the Forenoon, at the in L. in the County of &c. concerning a Commission of Bankruptcy in prosecution against L. M. of &c. And hereof you are not to fail at your peril. Dated, &c.

A. B.

C. D.

E. F.

A

*A Warrant to Commit a Person to the Goal who refuseth to be Sworn, and to Answer Interrogatories.*

**W**Hereas their Majesties Commission under the Great Seal of England, bearing date the       day of       last past, at *Westminster*, grounded upon the several Statutes concerning Bankrupts, hath been awarded against A. B. of *&c.* directed to us, who have hereunto put our Seals, and subscribed our Names, and to B. L. *&c.* and we being the major part of the Commissioners therein named, having taken upon us the execution of the same Commission; and it appearing to us upon good and sufficient proof, That the said A. B. hath for several years last past sought his livelihood by buying and selling of Cattle, Malt and other Merchandise, and thereby become indebted to several persons in the sum of one thousand pounds and upwards; and whereas upon good and sufficient proof to us made, we have adjudged the said A. B. a Bankrupt, to all intents and purposes, within the true intent and meaning of the said several Statutes made against Bankrupts, some or one of them, before the Date, and suing forth of the same Commission; and whereas J. S. was suspected to have im-  
beiled

belled, concealed and secretly disposed of a great part of the Goods and Estate of the said A. B. and was duly summoned to appear before us ; but hath made default in contempt of our Authority ; but at length coming and appearing before us, we then sitting in execution of the said Commission, did obstinately refuse to be sworn, and make answer to such Interrogatories and Questions, as we by vertue of the said Commission required him to answer unto concerning the said A. B. and his Estate, according to the true meaning of the said Statutes, for the discovering the Estate of the said A. B. in contempt of the said Statutes, and of the Commission aforesaid, and the Authority thereby to us given. These are therefore to Will, Require and Authorize you, and every of you, immediately upon receipt hereof, to Apprehend, Arrest, and to take into your Custody the Body of the said J. S. and him safely to convey to their Majesties Goal for the County of      and him there to deliver to the Keeper of the said Goal, who is hereby Required and Authorized by vertue of the said Commission and Statutes aforesaid, to receive the said J. S. into his Custody, and him safely to keep and detain, without Bail or Mainprise, until he shall conform himself to our Authority, and be thence delivered by due course of Law. And for his, and your  
so

so doing, this shall be your sufficient Warrant. Given under our Hands and Seals, the                      day of &c.

Commissioners commit one to the Goal for refusing to answer Interrogatories for the escape of the Committee; Action is brought against the Goaler. The Action lies.

There were three exceptions to the Declaration.

1. Because it's said the Lord Chancellor *dedit plenam Potestatem*, which is not good, for his Office is Ministerial, and the Statute gives the Power; but *per Curiam*, the Declaration is good; for it is *per Commissionem dedit*, and it is also *juxta Statut.*

2. Exception, it is alledged the Defendant suffered him to escape, and he doth not say he was not satisfied. *Per Cur.* it is good, and shall be intended he is not satisfied, and the escape is the *Tort.*

3. It is alledged the Commissioners offered Interrogatories to him, and it is not shewed what they were. But this was over-ruled, and Judgment *pro Quer.* 1 Rol. Rep. 47. Barnes and Cary against the Sheriff of Bristol.



# CHAP. VII.

*The Commissioners Power in reference to the Bankrupt : Of Proclamation, and the form of it ; of breaking Houses, &c. in reference to the Bankrupts Wife : Of the Examination of the Bankrupt and his Wife : Of the Examination of Witnesses, and others for the discovery of the Estate and Debts of the Bankrupt : Of the Penalties of refusing to be Sworn, to be Examined, or to Discover : Of Perjury ; and the forfeitures, how to be applied : And of Interrogatories.*

## Commissioners Power.

### 1. As to the Bankrupt himself.

To cause him to appear { *By Proclamation.*  
*By breaking up*  
*Houses.*

Per Stat. 13 Eliz. **I**F any such Bankrupt doth withdraw himself from his usual Mansion-House ; that then the Commissioners, or the major part of them have full Power and Authority to award five Proclamations.

Concealing the  
Person of the  
Offender.

‘clamations in the King’s Name, upon  
‘five sundry Market-days, in such places,  
‘near the place where such Bankrupt  
‘hath commonly dwelled, or made his  
‘abode; commanding them by the same  
‘Proclamations in the King’s Name, to  
‘return with all convenient speed, and  
‘to yield his Body before the said Com-  
‘missioners, having Authority as afore-  
‘said, or one of them, at such time and  
‘place, as by the said Proclamation shall  
‘be appointed: And if the said person  
‘do not repair and yield his or their  
‘Body, as is aforesaid, that then the Bo-  
‘dy of such Offender shall be adjudged  
‘and taken to all intents and purposes  
‘out of the Kings Protection. And  
‘that also every Person and Persons that  
‘shall wittingly and willingly Receive,  
‘Detain, or keep secretly any Person or  
‘Persons so demanded by Proclamation,  
‘as aforesaid, shall suffer such pains, by  
‘Imprisonment of his, or their Bodies,  
‘or to pay such Fine to our Sovereign  
‘Lord the King’s Majesty, as to the  
‘Lord Chancellor or Lord Keeper of  
‘the Great Seal (being informed there-  
‘of) by the Commissioners so to be ap-  
‘pointed, as aforesaid, or the major part  
‘of them shall seem meet and conveni-  
‘ent for the said Offence or Offences.

*Per Stat. 1 Jac. c. 15.* ‘The said Com-  
‘missioners may call before them, or the major

major part of them the said Bankrupt;  
 and if upon lawful warning left or Warning.  
 made in Writing at three several times,  
 at the dwelling-place or House where  
 the said Bankrupt, his Wife, or Family  
 for the most part of his abode did  
 Lodge, or remain within one year next  
 before he, she or they became Bank-  
 rupt, the said Bankrupt shall not appear  
 before the said Commissioners, or the  
 greater part of them; that then, and  
 thenceforth it shall be Lawful for the  
 greater number of the said Commis-  
 sioners to appoint, to proclaim the said <sup>Proclaim.</sup>  
 party a Bankrupt, at such publick place  
 or places where the said Commissioners  
 shall think meet, warning him, her or  
 them to appear before them upon the  
 said Commission at some time appoint-  
 ed. And that if upon such several Pro-  
 clamations made in some publick place,  
 the party offending yield not his Body,  
 &c. the Commissioners may award a  
 Warrant to such fit persons as they <sup>Warrant to</sup>  
 think meet, to apprehend the Body or <sup>Apprehend.</sup>  
 Bodies of such Offender, and to bring  
 him before the said Commissioners,  
 wheresoever the said party or parties  
 offending may be found in place privi-  
 ledged, or not, to be examined by the  
 said Commissioners, or the greatest part  
 of them.

After

After notice left in writing three several times as the Statute directs; then the Commissioners may proceed to Proclamation.

*The Form of a Proclamation.*

**O** Yes, Oyes, Oyes, The King and Queens Majesties do straitly Charge and Command A. B. late of that he on the day of this Instant, &c. do yield his Body before E. M. Esq; &c. their Majesties Commissioners, named and appointed for the execution of the Statutes of Bankrupts against the said A. B. or the major part of them that shall be then present at the House of R. L. &c. upon the Pains and Peril in the said Statutes in that case made, provided and appointed.

*God Save the King and Queen.*

*The Commissioners Power in breaking up Houses.*

**B**Y the Stat. 21 Jac. c. 29. It is enacted, 'That in the execution of the said Commission, it shall be Lawful to, and 'for the said Commissioners, or the 'greater part of them, or any other Person or Persons, Officer or Officers, by 'them, or the greater part of them, to 'be deputed and appointed by their Warrant or Warrants under their Hands 'and

‘and Seals, to break open the House or  
 ‘Houses, Chambers, Shops, Warehouses,  
 ‘Doors, Trunks or Chests of the said  
 ‘Bankrupt, where the said Bankrupt. or  
 ‘any of his or her Goods or Estate shall  
 ‘be, or reputed to be; and to seise upon,  
 ‘and order the Body, Goods, Chattels,  
 ‘ready Mony, and other Estate of such  
 ‘Bankrupt, as by the said former Laws  
 ‘are limited and appointed, whether it  
 ‘be by Imprisonment of his or her Bo-  
 ‘dy, or otherwise as the said Commissio-  
 ‘ners, or the greater part of them shall  
 ‘think meet.

The Commissioners may break open the House of a Bankrupt for Debt of the Debtor; and if the Bankrupt convey his Goods to his Neighbours House, the Commissioners may not, but the Sheriff may break open the House, because he is a sworn Officer of the Kings. The Commissioners may break open the Booth of another to come to the Bankrupts Goods, *per Mr. Barckdale, Lett. Lincolns-Inn, 1627.* But *Quere* if the Commissioners do not now break open any House, Shop or Room where the Bankrupt or his Goods are, tho’ they are in the House of a Stranger, *Sed Cave*, for this part of the Statute is very penal, and shall be taken strictly. And possibly a Judge at a Trial may think that to be Law, which upon mature reflexion appears not to be so.

F

The

The Commissioners Power concerning  
the Bankrupts Body, and concerning  
the Bankrupts Wife.

*The words of the Statutes concerning this  
are as follow.*

**P**ER Stat. 13 Eliz. c. 7. It is enacted,  
‘That the Commissioners by vertue  
‘of that Act, and of such Commission,  
‘shall have full Power and Authority to  
‘take by their Discretions such Or-  
‘der and Direction with the Body  
‘and Bodies of such person, where-  
‘soever he or she may be had, either in  
‘his or her House or Houses, Sanctuary  
‘or elsewhere, as well by Imprisonment  
‘of his or her Body or Bodies, as also  
‘with all his or her Lands, &c.

Proclamation.

Warrant.

Per Stat. 1 Jac. c. 15. It is enacted,  
‘That if upon Lawful Warning or No-  
‘tice left, or made in Writing three se-  
‘veral times at the Dwelling House, &c.  
‘( vide supra ) the Bankrupt shall not ap-  
‘pear, then they may make Proclamati-  
‘on ( prout supra ) and if then the Bank-  
‘rupt appear not, then the Commissioners  
‘are impowred to award a Warrant to  
‘such fit Person or Persons as they think  
‘meet, to apprehend the Body of such  
‘Offender, and to bring him, her or  
‘them

‘ them so offending before the said Com-  
 ‘ missioners, wheresoever the Parties so  
 ‘ Offending may be found in place pri-  
 ‘ viledged or not, to be examined by the  
 ‘ said Commissioners, or the greater part  
 ‘ of them. And if therein the Offender  
 ‘ or Offenders shall refuse to be exami-  
 ‘ ned, or refuse to answer fully to every  
 ‘ Interrogatory, to him, her or them to  
 ‘ be administred by the said Commis-  
 ‘ sioners, or the greater part of them, it  
 ‘ shall be lawful for the said Commis-  
 ‘ sioners, or the greater part of them, to  
 ‘ commit the said Offender or Offenders  
 ‘ to some close or strait Imprisonment, Imprisonment.  
 ‘ there to remain until he, she or they  
 ‘ better conform him or her self.

And by the Stat. 21 Jac. c. 19. It is  
 Enacted, ‘ That after such time as any  
 ‘ Person shall by the said Commissioners,  
 ‘ executing the said Commission, or the  
 ‘ greater part of them, be lawfully ad-  
 ‘ judged or declared to be a Bankrupt ;  
 ‘ the said Commissioners, executing such  
 ‘ Commission, shall have Power and Au-  
 ‘ thority to examin upon Oath, the Wife Wife Examined  
 ‘ and Wives of all and every such Bank-  
 ‘ rupt, for the finding out and disco-  
 ‘ vering of the Estate and Estates, Goods  
 ‘ and Chattels of such Bankrupt or Bank-  
 ‘ rupts, concealed, kept or disposed of by  
 ‘ such Wife or Wives, in their own Per-  
 ‘ son and Persons, or by their own Act  
 F 2 ‘ or

‘or Means, or by any other Person or  
 ‘Persons. And that she and they, the  
 ‘said Wife and Wives shall incur such  
 ‘danger and penalty for not coming be-  
 ‘fore the said Commissioners, or for re-  
 ‘fusing to be sworn and examined, or  
 ‘for not disclosing the truth upon her or  
 ‘their examination, as in and by the  
 ‘said former Laws, or either of them is  
 ‘already made and provided against any  
 ‘other Person or Persons in the like  
 ‘Cases.

So that by this Law the Wife must be  
 summoned to come before the Com-  
 missioners, and if she come not, or  
 refuse to be sworn, they may im-  
 prison her as well as her Husband :  
 So likewise if she refuse to discover  
 the truth.

A Bankrupt was committed to the  
*Fleet*, the Warrant to the Warden of the  
*Fleet* was, to receive and keep in Prison,  
 to answer and to satisfy all such matters  
 as shall be objected against him. The  
 Question was, If the Commissioners may  
 license him to go at large to treat a-  
 bout his Depts. *Per Cur.* If the Warrant  
 had been that the party should have been  
 in Execution, then he could not be en-  
 larged ; but the Court advised them to  
 take security, lest he should withdraw  
 himself. But if one had Judgment against  
 a Bankrupt, and upon an *Habeas Corpus*  
 brought



brought, he is committed in Execution, without a *Cap' Utlagat'* then the Commissioners cannot enlarge him, *Noy 140. Edwards Case.*

By *Stat. 21 Jac. c. 19.* It is Enacted,  
 'That if any Bankrupt, upon his or her Examination or Examinations to be taken  
 'before the said Commissioners executing  
 'the said Commission, be found fraudulently or deceitfully to have conveyed  
 'away his or her Goods, Chattels, Lands, Tenements, Offices, Fees, Rents or Annuities, or other Estate, or any part thereof, to the value of 20 s. or above,  
 'to the end and purpose to hinder the execution of this Statute, or of any other the aforesaid Statutes, or thereby to defraud, delay or hinder his or her Creditors of the same, and shall not upon his or her examination discover unto the said Commissioners, and (if it lie in his or her power) deliver unto the said Commissioners all that Estate, Goods and Chattels, so fraudulently and deceitfully conveyed away, as aforesaid, or by him or her, his or her means kept or detained from the said Commissioners, or that cannot make it appear unto the said Commissioners, that he or she hath sustained some casual loss, whereby he or she is disabled to pay, what he or she then owed, shall or may be indicted for such fraud or *Indictment.*  
 'abuse,

The Bankrupts fraudulent conveyance away of his Goods.

Pillory.

‘abuse, at the Assises or General Sessions,  
 ‘to be holden before the Judges of Assise,  
 ‘or Justices of the Peace of the County  
 ‘or Place where he or she shall become  
 ‘Bankrupt: And if upon such Indict-  
 ‘ment or Indictments, the Bankrupt be  
 ‘thereof convicted, he or she so convict-  
 ‘ed, shall be set upon the Pillory in some  
 ‘publick place, for the space of two  
 ‘hours, and have one of his or her Ears  
 ‘nailed to the Pillory, and cut off.

Of the Examination of the  
 } Bankrupt.  
 } his Wife.  
 } other Persons as Witnes-  
 } ses, Concealers, &c.

*And of their refusal to swear and discover  
 the Truth, and the Consequence.*

**B**Y Stat. 1 Jac. c. 15 If upon five several Proclamations the Bankrupt appear not, the Commissioners may award a Warrant to apprehend his Body, and to bring him before the said Commissioners wheresoever he may be found, to be examined by the Commissioners, *prout prius* more at large.

And that it shall be lawful for the said Commissioners, or the greater part of them, to examin the said Offender or Offenders *Interrogatories* upon such Interrogatories touching the Lands, Tenements, Goods, Chattels, Debts, Bills, Bonds,

*Bonds, Books of Accounts, and such other things as may tend to disclose his, her or their Estate, or the secret Grants, Conveyances, Eloyning of his or their Lands, Tenements, Goods, Mony and Debts, as they shall think meet: And if the Bankrupt shall refuse to be examined, or to answer fully to every Interrogatory, that then he shall be committed to Prison, prout supra.*

By Stat. 21 Jac. c. 19. The Commissioners have Power to examine the Bankrupts Wife upon Oath; and if she come not, or refuse to be sworn, then to incur the like penalty with others, prout supra more at large.

*Of the Examination of Witnesses, and others, for the discovery of the Bankrupts Estate Real and Personal, and his Debts, and the penalty for refusing to be sworn and examined, or to discover.*

**P**ER Stat. 13 Eliz. c. 7. It is Enacted,  
 'That if after any such Act or Of-  
 'fence committed, and complaint there-  
 'of made to the said Commissioners or  
 'the major part of them, by any party  
 'grieved concerning the premisses, know-  
 'ing, supposing or suspecting any of the  
 'Goods, Chattels, Wares, Merchandises  
 'or Debts of such Offender or Offenders,  
 'Debtor or Debtors to be in custody, use,  
 'occupying, keeping or possession of any  
 F 4 'per-

Comptrollers.

Debtors.

' person or persons, or any person or  
 ' persons to be indebted to any such Of-  
 ' fender or Offenders, do make relation  
 ' thereof to the said Commissioners, so to  
 ' be appointed, or the major part of  
 ' them; That then the said Commissio-  
 ' ners, or the most part of them, shall  
 ' by vertue hereof and of the said Com-  
 ' mission, have full Power and Authority  
 ' to send for, and call before them by  
 ' such Process, Ways or Means, as they  
 ' shall think convenient by their discreti-  
 ' ons, all and every such person and per-  
 ' sons so known, suspected or supposed to  
 ' have any such Goods, Chattels, Wares,  
 ' Merchandises or Debts in his or their  
 ' custody, use, occupation, keeping or  
 ' possession, or supposed or suspected to  
 ' be indebted to such Offender or Offen-  
 ' ders; and upon their appearance to ex-  
 ' amin them, and every of them, as well  
 ' by their Oaths as otherwise, by such  
 ' ways and means as the said Commissio-  
 ' ners, or the major part of them by their  
 ' discretions shall think meet and conve-  
 ' nient, for, and upon the specialty, cer-  
 ' tainty, true declaration and knowledge  
 ' of all, and singular such Goods, Chat-  
 ' tels, Wares, Merchandises and Debts of  
 ' any such Offender or Offenders, as be  
 ' supposed or suspected to be in his or  
 ' their custody, use, occupation or posses-  
 ' sion, and all such Debts as by them or  
 ' any of them shall be supposed or sus-  
 ' pected

pected to be owing to any such Offender or Offenders.

And if any such person or persons, upon such Examination, do not disclose, and plainly declare and shew the whole Truth of such things as he or they shall be examin'd of concerning the premisses to his knowledge, or do deny to swear; then every such person or persons, so denying to swear, or being examined, do not declare the plain and whole Truth concerning the Premises, upon due proof thereof to be made before the said Commissioners, or the major part of them, by Witnesses, Examination or otherwise, as to the said Commissioners, or the major part of them shall seem sufficient in that behalf, shall lose and forfeit double the value of such Goods, Chattels, Wares, Merchandises and Debts, by them, or any of them so concealed, and not wholly and plainly declared and shewed; which forfeiture shall be levied by the said Commissioners, or the major part of them, of the Lands, Tenements, Hereditaments, Goods and Chattels of such persons so denying to swear, or not disclosing the whole Truth, as is aforesaid, by such ways and means, and in such manner and form, as is before limited and appointed for the principal Offender or Offenders, Debtor or Debtors, and the same  
for-  
Penalty for Obstinacy.

‘forfeitures to be distributed or imploy-  
 ‘ed to, or for the satisfaction and pay-  
 ‘ment of the Debts of the said Creditor  
 ‘or Creditors, in such like manner, rate  
 ‘and form, as is above declared con-  
 ‘cerning the ordering of the Lands and  
 ‘Tenements, Officers Fees, Goods and  
 ‘Chattels of such Offender or Offenders,  
 ‘Debtor or Debtors, *as is aforesaid.*

Concealers.

*Per Stat. 1 Jac. c. 15.* For a further in-  
 forcement for discovery of the Bank-  
 rupts Estate, by Examination of Trustees,  
 Concealers, or of such that have Coni-  
 fance of his Estate, according to the  
 Statute of 13 *Eliz.* It is Enacted, ‘That  
 ‘if any person or persons, being known,  
 ‘supposed or suspected to have or detain  
 ‘any part of the Lands, Tenements or  
 ‘Hereditaments, Goods, Chattels or  
 ‘Debts of the said Bankrupt, or to be  
 ‘indebted to, or for the benefit of the  
 ‘said Bankrupt, shall after lawful warn-  
 ‘ing to the said person or persons given,  
 ‘to come before the said Commissioners,  
 ‘or the greater part of them, to be ex-  
 ‘amined according to the intent of the  
 ‘said Statute, refuse to come, or shall  
 ‘not come before the said Commissioners  
 ‘at the time appointed, having no law-  
 ‘ful impediment, such as shall be admit-  
 ‘ted and allowed of by the said Com-  
 ‘missioners or the major part of them,  
 ‘and which shall be then signified or  
 ‘made

'made known to the said Commissioners  
 'at the time of their assembly ; or that  
 'any such person or persons , having  
 'knowledge or warning of any other as-  
 'sembly or meeting of the said Com-  
 'missioners again, shall not come and ap-  
 'pear before them at such time as he or Refusal to ap-  
 'she lawfully may come, having no such pear, or an-  
 'lawful impediment as shall then be swer, or dis-  
 'made known to the said Commissioners, close.  
 'and by them admitted and allowed of  
 'as aforesaid, or being come before them,  
 'shall refuse to be sworn, and to make  
 'answer to such Interrogatories as shall be  
 'administred unto him or them, accord-  
 'ing to the true intent and meaning of  
 'the said Statute made in the 13 *Eliz.*  
 'or of this present Act, That then it shall  
 'be lawful for the said Commissioners to  
 'commit to such Ward or Prison, as to  
 'them or the major part shall be thought  
 'meet, all such person and persons as  
 'shall so refuse to be sworn, and make  
 'answer to such Interrogatories as shall  
 'be so ministred as aforesaid ; and also  
 'to direct their Warrants to such person  
 'or persons , as to them or the greater  
 'part of them shall be thought meet, to  
 'apprehend and arrest such person and  
 'persons as shall refuse to appear before  
 'them as aforesaid, and to bring him, her  
 'or them before the said Commissioners  
 'or the greater part of them, to be exami-  
 'ned, as aforesaid ; and upon his, her  
 'or

‘or their refusal to come, or to be examined before the said Commissioners, as aforesaid, to commit the said party so refusing, to such Prisons as the said Commissioners or the greater part of them shall think meet, there to remain without Bail or Mainprise, until such time as the said party so refusing to come, or to be sworn to answer before the said Commissioners, shall submit him or her self to the said Commissioners, and be by them examined according to the true intent of the said Statute, and of this present Act.

Witnesses.  
Charges.

Note. By *Stat. 1 Jac. c. 15*. It is provided, That such Witnesses as shall be sent for, shall have such costs and charges as the Commissioners in their discretion shall think fit, the same to be rateably born by the Creditors according to the proportion of their Debts.

*Per Stat. 21 Jac. 15*. The Commissioners may examine upon Oath, or by any other ways or means, as to them shall seem meet, any person or persons for the finding out and discovery of the Truth and certainty of the several Debts due and owing to all such Creditor or Creditors, as shall seek relief by the Commission.

Two refuse to be examined, and the Commissioners make a joint Commitment, it's ill; and it was *quousque* they  
con-



conform, and upon return of the *Habeas Corpus*, it is not averred that they were obstinate, 29 Car. 2. B. R. *Penrice vers. Wing.*

Note. Action on the Case lies against a Sheriff for suffering one to escape, who was committed by the Commissioners of Bankrupts, because he refused to be examined, 1 Roll. Rep. 47. *More 834*—*The Case of the Sheriffs of Bristol*, Vide *supra*.



The Commissioners committed one *Jeakile* for refusing to swear upon a Commission against *Thompson*. Now he did not refuse to swear, but had sworn he had none of the Bankrupt *Thompsons* Estate in his hands, but he would not answer whether any of *Thompsons* Estate came to his hands before the Commission sued out, &c. having received his own Debt before, nor *per Curiam* is he compellable to swear so, upon 1 Fac. c. 15. and then he was committed by A. B. Commissioners, for refusing to swear, &c. whereas the Commission was to A. B. and others, it appears not that A. and B. were a majority or a *Quorum*, which is ill, 3 Keb. 837. *Rex vers. Jeakill*.

of

Of Perjury, { *By the Bankrupt,  
Witnesses, Concealers and  
others, and the Penalties.*

1 *Jac. c. 15.* **I**F upon the Bankrupts examination it appears that he or she, or they have committed any wilful or corrupt Perjury, tending to the hurt or damage of the Creditors of the said Bankrupt, to the value of 10 l. of Lawful Mony of *England* or above, the party so offending shall or may be thereof indicted in any of the King's Majesties Courts of Record, and being lawfully corrected thereof, shall stand upon the Pillory in some publick place, by the space of two hours, and have one of his Ears nailed to the Pillory, and cut off.

And if any other person or persons, other than the Bankrupt, either by subornation, unlawful procurement, sinister perswasion, or means of any others, or by his own Act, consent or agreement shall wilfully and corruptly commit any manner of wilful perjury by his deposition to be taken before the said Commissioners, or the greater part of them, as aforesaid, that then the Parties so offending, and all, and every person and persons that shall unlawfully and corruptly procure any such unlawful

law.

lawful, wilful and corrupt Perjury, shall  
or may therefore be indicted in any of  
the Kings Majesties Courts of Record;  
and after his or their conviction there-  
of, shall incur such forfeitures, and re-  
ceive and suffer such pains and punish-  
ments as are limited by the Statute con-  
cerning perjury, in the 5th Year of the  
reign of Queen Elizabeth.

The punishment by the said Statute is,  
The Perjured Person shall forfeit 20 l.  
and endure half an years Imprisonment  
without Bail or Mainprize, and his Oath  
never after to be received. And if he  
hath no Goods or Lands of that value,  
then to be set in the Pillory in some Mar-  
ket Town, and to have both his Ears  
nail'd, and to be disabled to be a Wit-  
ness in any Court, 5 *Eliz. c. 9.* And by  
the same Statute the procurers of Perju-  
ry are to forfeit 40 l. and if they have  
not Estate of that value, then Imprison-  
ment for half a year, and Pillory, and  
to be admitted no Witness in any Court  
of Record.

of

*Of Forfeitures on these Acts, and how to be disposed.*

**P**ER Stat. 13 Eliz. c. 7. The Commissioners are impowred to call before them all such Persons as are known, supposed or suspected to have any Goods, Wares, &c. in his or their Custody or Occupation, &c. and to examine them; and if such person or persons upon such examination, do not disclose, and plainly declare and shew the whole Truth of the Premisses, &c. *ut supra*, shall lose and forfeit double the value of all such Goods, &c. which forfeitures shall be levied by the said Commissioners of the Lands, Tenements, Hereditaments, Goods and Chattels of such persons so denying to swear, or not disclosing the whole Truth, by such ways and means, and in such manner and form as is before limited and appointed for the principal Offender or Offenders, Debtor or Debtors; and the said forfeitures to be distributed or employed for the satisfaction and payment of the Debts of the said Creditors, &c. prout *supra*.

And by the said Statute of 13 Eliz. c. 7. It is Enacted, That if at any time before, or after that any such person becomes a Bankrupt, any persons do fraudulently, by Covin or Collusion, claim, demand, recover, possess or detain any Debts, Duties, Goods Chattels,

Chattels, Lands or Tenements, by Writing, Trust or otherwise, which were, or shall be due, belonging or appertaining to any such Offender, other than such as he or they can and do prove to be due by Right and Conscience, for Money paid, Wares delivered, &c. before the Commissioners, &c. that then every such person (Concealer, &c.) shall forfeit and lose double as much as he or they shall so claim, demand, detain or possess, which said forfeiture shall be levied, recovered and employed in manner and form as is afore rehearsed.

Provided also, and be it further Enacted, That if it shall fortune, the Creditors to be satisfied, and paid off their Debts and Duties, of, or with the proper Lands, Tenements, Goods, Chattels and Debts of the said Bankrupts, or of, or with the same, and some part of the forfeitures of the said double values, to be forfeited as is afore said, and that there shall remain an overplus of the said forfeitures, of the said double values; That then the one moiety of the said overplus, of the said forfeitures of the double values so remaining, shall be by the said Commissioners so executing the said Commission within convenient time after the levying thereof, paid unto the Queens Majesty, her Heirs and Successors, and the other moiety thereof shall be by the said Commissioners employed and distributed to, and amongst the Poor within the Hospitals, in  
G every

every City, Town or County where any such Bankrupt shall happen to be.

Per Stat. 1 Jac. c. 15. It is Enacted, That all and every Sum and Sums of Money, which shall be forfeited by force of this said Act, shall be sued for, and recovered by the said Creditors only, or any of them that will sue for the same, by Action of Debt, Bill, Plaint or Information in any of the Kings Majesties Courts of Record; and the Sum or Sums of Money so recovered, the Charges of Suit being deducted, shall be distributed and divided towards the payment of the said Creditors of the Bankrupt.

If persons suspected to have Goods, &c. of the Bankrupt, do not upon their Examination discover the whole Truth, they forfeit double the value of the Goods.

If persons fraudulently claim, detain, &c. any Lands, Debts, Duties, Wares, Goods, &c. of the Bankrupt, either before or after he becomes a Bankrupt, shall lose double as much as they shall so claim, &c.

He that is guilty of Perjury, in his Examination, shall forfeit 20 l. and he that is guilty of Subornation of Perjury, shall forfeit 40 l. besides other Penalties. *Vide supra.*

*Inter-*

*Interrogatories.*

**A**S to Interrogatories, they are to be framed according to the matters to be examined to; tho' some will have ready all the general Interrogatories that will fit the Examinations throughout all the Statutes. Some Commissioners again will not examine by Interrogatories at all, for fear of some leading Questions may make Witnesses frame Evasions. But I cannot commend this way, it being a sort of careless behaviour; and too slight for such a weighty matter as this; considering the Penalties attending the Offenders against the Statutes. Besides, at a Trial, Depositions may be made use of as Evidence (especially against the party himself, or in case of the Death of Witnesses) and to read a Deposition without referring to Interrogatories; is to judge upon an Answer without knowing the state of the Question. I had thought to have inserted here the Forms of some Comprehensive Interrogatories, but there is such variety of Examination in the executing this Commission, that I shall leave that to the Ingenuity of the Commissioners, who may easily form Interrogatories, as the nature of the Case; and the Matter before them shall direct.

## CHAP. VIII.

*Of the Disposition of the Bankrupts Estate, Freehold and Copyhold: Of Redemption of Lands, Mortgaged: Of Trusts, Sales, Settlements of Lands: What shall be accounted Fraudulent; and when, and in what Cases Purchasers are safe, with many late Cases and Resolutions thereon.*

**P**ER Stat. 13 Eliz. c. 7. 'The Commissioners shall have full power  
'and authority to take by their  
'Discretions, such order and Direction  
'with all (the Bankrupts) Lands or Tenements, Hereditaments, as well Copy or Customary-hold as Freehold, which he  
'or she shall have in his or her own  
'Right, before he or she became Bankrupt; and also with all such Lands, Tenements and Hereditaments, as such person shall have purchased or obtained for  
'Money, or other recompence jointly  
'with his Wife, Children or Child, to the  
'only use of such Offender or Offenders,  
'or of, or for such Use, Interest, Right  
'or Title, as such Offender or Offenders  
'then shall have in the same, which he or  
'she



‘ the may lawfully depart withal, or  
‘ with any person or persons, of trust to  
‘ any secret use of such Offender or Of-  
‘ fenders; and also with his or her Mo-  
‘ ny, Goods, Chattels, Wares, Merchandi-  
‘ ses and Debts wheresoever they may be  
‘ found or known, and cause the said  
‘ Lands, Tenements, Fees Annuities, Of-  
‘ fices, Goods, Chattels, Wares, Mer-  
‘ chandises and Debts to be searched,  
‘ viewed, rented and appraised to the <sup>View.</sup>  
‘ best value they may, and by Deed in-  
‘ dented, inrolled in one of the Queens  
‘ Majesties Courts of Record, to make  
‘ Sale of the said Lands, Tenements and <sup>Sale.</sup>  
‘ Hereditaments, and of all Deeds, Wri-  
‘ tings and Evidences touching only the  
‘ same, belonging to such Offender or  
‘ Offenders, Debtor or Debtors; and  
‘ also of all Fees, Annuities, Offices, Goods  
‘ and Chattels, or otherwise to order the  
‘ same for true satisfaction and payment  
‘ of the said Creditors; that is to say,  
‘ to every of the said Creditors a portion, <sup>Distribution.</sup>  
‘ rate and rate-like, according to the  
‘ quantity of his or their Debts; and  
‘ that every Direction, Order, Bargain,  
‘ Sale, and other things done by the said  
‘ persons so Authorised, as is aforesaid, in  
‘ Form aforesaid, shall be good and ef-  
‘ fectual in the Law, to all intents, con-  
‘ structions and purposes, against the said  
‘ Offender or Offenders, Debtor or Deb-  
‘ tors, his or their Wife or Wives, Heir  
‘ 3 and

‘and Heirs, Child and Children, and  
 ‘such person or persons as by such joint  
 ‘Purchase, with the said Offender or  
 ‘Offenders, as is aforesaid, have, or shall  
 ‘have any Estate or Interest in the Pre-  
 ‘misses; and against all other person and  
 ‘persons, claiming by, from, or under  
 ‘such Offender or Offenders, Debtor or  
 ‘Debtors, by any Act or Acts, had, made  
 ‘or done, after any such person shall be-  
 ‘come Bankrupt, as is aforesaid; and  
 ‘also against the Lords of the Mannors,  
 ‘whereof the said Copyhold or Custo-  
 ‘mary Lands been holden, their Heirs,  
 ‘Successors and Assigns, and every of  
 ‘them.

Copyhold.

‘Provided always, and be it Enacted,  
 ‘That all, and every person or persons,  
 ‘to whom any such Sale of Copyhold  
 ‘or Customary Lands or Tenements  
 ‘shall be made, shall before such time  
 ‘as they, or any of them shall enter or  
 ‘take any profit of the same Lands or  
 ‘Tenements, agree and compound with  
 ‘the Lords of the Mannors, of whom  
 ‘the same shall be holden, for such Fines  
 ‘or Incomes as heretofore hath been  
 ‘most usual and accustomed to be yield-  
 ‘ed or paid therefore; and that upon  
 ‘every such agreement or composition,  
 ‘the said Lords for the time being, at  
 ‘the next Court to be holden, at, or for  
 ‘the said Mannors, shall not only grant  
 ‘to the said Vendee or Vendees upon re-  
 ‘quest,

quest, the same Copy or Customary  
Lands or Tenements, by Copy of Court-  
Roll of the said Mannors, for such  
Estate or Interest as to them shall be  
sold, and reserving the Ancient Rents,  
Customs and Services; but also in the  
same Court admit them Tenants of  
the same Copy or Customary Lands,  
as other Copyholders of the same Man-  
nors have been wont to be admitted,  
and to receive their Fealty according-  
ly.

And it is further Enacted, That if  
any person or persons, which is, or shall  
be published and declared to be a Bank-  
rupt within this Act, shall at any time  
after purchase any Lands, Tenements, Purchase after  
Bankruptcy.  
Hereditaments Free or Copy, Offices,  
Fees, Goods or Chattels; or that any  
Lands, Tenements, Hereditaments Free  
or Copy, Offices, Fees or Chattels shall  
Descend, Revert, or by any means Descent after  
Bankruptcy.  
come to any such person or persons be-  
ing Bankrupt, as is aforesaid, before  
such time as their Debts due to their  
Creditors shall be fully satisfied and paid,  
or otherwise agreed for; that then the  
said Lands, Tenements, Hereditaments  
as well Free as Copy, Offices, Fees,  
Goods and Chattels, shall by vertue of  
this Act be by the said Commissioners  
or the major part of them, bargain-  
ed, sold, extended, delivered and used  
for, and towards the payment of the  
said

‘said Creditors, in such like manner  
 ‘and form, as other the Lands, Tene-  
 ‘ments, Hereditaments Free or Copy,  
 ‘Offices, Fees, Goods and Chattels of the  
 ‘said Bankrupts, which they had when  
 ‘they were first declared to be Bank-  
 ‘rupts, should, or might have been bar-  
 ‘gained, sold, disposed or used, by ver-  
 ‘tue of this Act.

Conveyance  
*bona fide.*

‘Provided always, that this Act shall  
 ‘not extend to any Lands, Tenements  
 ‘or Hereditaments Free or Copy, which  
 ‘heretofore have been assured by any  
 ‘such Bankrupt, or hereafter shall be  
 ‘assured by any Bankrupt, before he be-  
 ‘comes a Bankrupt: So always that  
 ‘such assurance be made *bona fide*, and  
 ‘not to the use of the Bankrupt himself  
 ‘only, or of his Heirs: And that the  
 ‘Parties to whose use such assurance  
 ‘hath or shall be made, be not at, or  
 ‘before the making of such assurance,  
 ‘privy or consenting to the fraudulent  
 ‘purpose of any such Bankrupt, to de-  
 ‘ceive his Creditors.

*Per Stat. 1 Jac. c. 15.* It is Enacted,  
 ‘That if any person which hereafter, is,  
 ‘or shall be Bankrupt, by intent of this  
 ‘Statute, shall convey or procure, or  
 ‘cause to be conveyed to any of his  
 ‘Children, or other person or persons,  
 ‘any Mannors, Lands, Tenements, He-  
 ‘reditaments, Offices, Fees, Annuities,  
 ‘Leases,

‘Leases, Goods, Chattels, or transfer his Conveyance.  
‘Debts into other Mens Names, except  
‘the same shall be purchased, conveyed, Settlement.  
‘or transferred for, or upon Marriage of  
‘any of his or her Children, both the  
‘Parties Married, being of the years of  
‘Consent, or some valuable consideration, shall be in the Power and Authority of the Commissioners in this behalf to be appointed or the more part of them, to Bargain, Sell, Grant, Convey, Demise, or otherwise to Dispose thereof, in as ample manner as if the said Bankrupt had been actually seised or possessed thereof, or the Debts were in his own Name of the like Estate or Interest, to his or their own use, at such time as he or she became a Bankrupt. And that every such Grant, Bargain, Sale, Conveyance and Disposition of the said Commissioners, or of the greater part of them, shall be good and available to all intents, constructions and purposes in the Law against the Offender or Offenders, his Heirs, Executors, Administrators and Assigns, and such Children and Persons as shall be subject to this Statute, and against all other Person and persons claiming by, from, or under such Offender or Offenders, or such said other persons to whom such Conveyance shall be made by the said Bankrupt, or by his means or procurement.

And

Debts due to  
Bankrupt.

And as for the Power of the Commissioners, touching the Debts due to the said Bankrupt, it is further Enacted, That the Commissioners of Bankrupts or the greater part of them, shall have Power to Grant and Assign, or otherwise to Order or Dispose all, or any of the Debts due to, and for the benefit of the said Bankrupt, by what person or persons soever, or in what manner and form soever, to the use of the Creditors of the said Bankrupt, according to the true intent of the Statute of 13 Eliz. And that the same Grant Assignment or Disposition of the said Debts in form aforesaid, to be made by the said Commissioners or the greater part of them, shall so vest the Property, Right and Interest of the said Debt and Debts, in the person or persons of him, her or them, to whom it shall be Granted, Assigned or Ordered by the said Commissioners or the greater part of them, as fully to all intents and purposes, as if the said Bill, Bond, Bonds, Statutes, Recognisances, Judgments or Contract, whereupon the said Debt or Debts, Dead or Deeds shall arise or grow, had been made, to or with, or for the said person or persons, to whom the same shall be so Granted, Assigned or Disposed by the said Commissioners; and that after such Grant, Assignment or Disposition made of the said Debts, that

‘that neither the Bankrupt, nor any  
 ‘other to whom any such Debt shall be  
 ‘due, shall have power to recover the  
 ‘same, nor to make any Release or Dis-  
 ‘charge thereof; neither shall the same  
 ‘be Attached as the Debt of the Bank- *Attachme<sup>nt</sup>.*  
 ‘rupt, or such said other person or per-  
 ‘sons to whom the same shall be due,  
 ‘by any other person or persons, accord-  
 ‘ing to the Custom of the City of Lon-  
 ‘don, or otherwise; but that the Party  
 ‘or Parties to whom the same Debts shall  
 ‘be assigned, shall have like remedy to  
 ‘recover the same, as fully and lawfully  
 ‘in the Name or Names of the person or  
 ‘persons to whom the same shall be so  
 ‘Granted, Assigned or Ordered by the  
 ‘said Commissioners, in all respects and  
 ‘purposes, as the party himself might  
 ‘have had, any Law, Statute, Use or  
 ‘Custom to the contrary thereof, in any  
 ‘wise notwithstanding.

*Per Stat. 21 Jac. 19.* It is Enacted, ‘Tha  
 ‘the said Commissioners, or the greater  
 ‘number of them, shall have Power by  
 ‘Deed indented and inrolled within six  
 ‘Months after the making thereof, in  
 ‘some of his Majesties Courts of Record  
 ‘at *Westminster*, to Grant, Bargain, Sell  
 ‘and Convey any Mannors, Lands, Tene-  
 ‘ment or Hereditaments, whereof any  
 ‘Bankrupt is, or shall be in any ways sei-  
 ‘fed of any Estate in Tail, in Possessor, *Lands Enail’d*  
 ‘Re-

'Reversion or Remainder and whereof no  
 'Reversion or Remainder is, or shall be  
 'in the King's Majesty, his Heirs or Suc-  
 'cessors of the Gift or Provision of his  
 'Majesty, his Progenitors, his Heirs or  
 'Successors, to any person or persons, for  
 'the relief and benefit of the Creditors  
 'of all such Bankrupts; and that all,  
 'and every such Grants, Bargains, Sales  
 'and Conveyances shall be good and  
 'available in the Law, to such person or  
 'persons, and their Heirs against the said  
 'Bankrupts, and against all, and every  
 'the Issues of the Body of such Bankrupts,  
 'and against all and every person and  
 'persons, claiming any Estate, Right,  
 'Title or Interest, by, from or under  
 'the said Bankrupts, after such time as  
 'such person shall become Bankrupt, and  
 'against all, and every other person and  
 'persons whatsoever, when the said  
 'Bankrupt by Common Recovery, or o-  
 'ther ways or means might cut off or de-  
 'bar from any Remainder, Reversion,  
 'Rent, Profit, Title or Possibility, into,  
 'or out of the said Mannors, Lands, Te-  
 'nements or Hereditaments.

Mortgages.

'And it is further Enacted, That if any  
 'Bankrupt shall Grant, Convey or Af-  
 'sure any Lands, Tenements, Heredita-  
 'ments, Goods, Chattels, or other Estate  
 'unto any person or persons, upon Con-  
 'dition or Power of Redemption at a  
 'day to come, by payment of Money or  
 'other



‘otherwise; That it shall and may be  
‘lawful to, and for the said Commis-  
‘sioners, or the greater part of them, be-  
‘fore the time of the performance of  
‘such Condition, to Assign and Appoint  
‘under their Hands and Seals, such per-  
‘son or persons as they shall think fit,  
‘to make tender or payment of Mony,  
‘or other performance according to the  
‘nature of such Condition, as fully as  
‘the Bankrupt might have done: And  
‘that the said Commissioners or the  
‘greater part of them, shall after such  
‘Tender, Payment or performance,  
‘have power to Sell and Dispose of such  
‘Lands, Tenements, Hereditaments,  
‘Goods and Chattels, and other Estates  
‘so Granted, Conveyed or Assured, up-  
‘on Condition, to and for the Benefit of  
‘the Creditors, as fully as they may Sell  
‘or Dispose of any the Estate of the  
‘Bankrupt.

General

## General Notes of Sales by Commissioners.

**O**bserve, That if Commissioners sell the Lands of the Bankrupt, and one of them hath right to the Land so sold, his right by this will not be extinct, *Godb. p. 319.*

Where the Sale  
of the Com-  
missioners may  
be defeated.

*Note, It's laid down in Jones Rep. p. 203. In Awdley and Halsey's Case, as a Rule, where the owner of Goods or Lands, by his own Act may not controul a Gift or a Charge; there if he become a Bankrupt, the Gift or Charge may not be defeated. If a man Bargain and Sell Lands, and before Enrolment, he becomes a Bankrupt, and after the Deed is inrolled, there the Bargainee shall hold the Land discharged from the Commissioners of Bankrupts: So if a Man gives Goods or Lands upon a precedent Condition, and after becomes a Bankrupt, and after the Condition is performed, this defeats the Power of the Commission. If a Man makes a Feoffment, or gives Goods upon Condition, and after becomes a Bankrupt, and the Lands or Goods are sold by the Commissioners, and afterwards the Condition is broken, and the Feoffor or Donor re-enter or re-seise the Goods, the Sale is defeated.*

The

The Explication of these Statutes will be better illustrated with the ensuing Cases and Considerations.

First as to the Bankrupts } Freehold.  
real Estate. } Copyhold.

*Of the Sale and Disposition of the Freehold Estate of the Bankrupt.*

I. **S**uch Lands which are in his own possession at the time of the Bankruptcy, as an Estate in Fee, in Tail for Life or Years.

II. Remainder and Reversion.

III. That which he purchased, or descended to him afterwards.

IV. Settlements on Marriage, or on Wife and Children, and Estates conveyed in in Trust, and in reference to Purchasers.

V. Lands Mortgaged.

VI. Lands extended by such as pretend to be Accountants to the King, or Goods seized, *vide infra sub Tit.* Disposal of the Personal Estate, &c.

I. Lands

I. Lands in his own possession at the time of his becoming a Bankrupt.

**Intail'd Lands.** 1. What he hath in his own Right, as Estate in Fee, Tail, Life or Years, Freehold or Copyhold. The Commissioners may sell all Intail'd Lands (except such whereof the Reversion or Remainder in the King, of the Gift or Provision of the King) and such Sale shall be good against the Bankrupt and his Issue, and all those in Remainder or Reversion, which the Bankrupt by common Recovery or otherways might cut off or debar. So that in such Case the Sale by Commissioners shall bar those in Reversion or Remainder, as much as if the Bankrupt himself had suffered a Common Recovery; and observe the words in Stat. 21 Jac. *Cut off or Debar from any Remainder, Reversion, Rent, Profit, Title or Possibility, in, to, or out of any Mannors, &c.*

**Contingent  
Estate.  
Son.**

I will put this Case. Lands are settled to A. and B. for their Lives, and after their Deceases, to the use of the first Son of their Bodies, lawfully to be begotten, and to the Heirs Males of such first Son, and for want of such Issue, to the use of the second Son, &c. in Tail Male, and so to the tenth Son. A. becomes a Bankrupt before he hath a Son: Whether the Commissioners may sell these Lands, and make to the Purchaser a Good Estate? I hold they may; for tho'

tho' A. be not Tenant in Tail, but bare Tenant for Life, yet the words in the Statute being *the Bargain and Sale shall be good against all and every other person and persons whomsoever, whom the Bankrupt by Common Recovery or otherwise might cut off and debar from any Remainder, Reversion, Rent, Profit, Title or Possibility*: It seems this Bargain and Sale shall be good. For A. the Father, before Issue, by his bare Feoffment might destroy the contingent Estate, as it is in *Archer's Case*. But were the Settlement made so as to support the contingent Remainder ( as is usually done ) so that the Father could by no means debar it by any act he could do, then it would make a greater Question; and yet if the Commissioners could not sell in such case, as Settlements are generally made now; the Act in this Point might be easily eluded. ( This is to be understood of voluntary Settlements. )

Voluntary Settlement.

A Man makes a Lease of certain Lands to A. B. for three Lives to begin after the death of J. S. if the three Lives shall so long live. A. B. becomes a Bankrupt. This Lease to A. B. is but a possibility, for J. S. may survive all the three Lives, and so it is a thing not grantable. Yet I think the Commissioners may sell this within the intent of these words; for tho' A. B. cannot properly grant this, yet it is such a thing as he may forfeit or extinguish. Q. H. A.

Possibility.

A. is Tenant in Tail, Remainder to B. in Tail. B. becomes a Bankrupt, A makes a Feoffment in Fee and dies, and the Commissioners sell these Lands before B. hath recovered in a Formedon, who shall bring the Formedon? Or whether the Act doth vest the Estate in the Purchaser, that he may enter, and have Ejectment? I hold that this Sale is good; for tho' the Remainder Man claims no Estate under the Bankrupt, yet the Bankrupt by Common Recovery might have barred him; and the Act saith such Bargains and Sales shall be good, and the Assignee shall bring a Formedon.

Escheat.

Bargain and Sale, and Bargainor becomes a Bankrupt before Inrollment.

A Bankrupt commits Felony, the Land shall not Escheat, but the Commissioners may sell it; this is to be understood of a Common Lord.

If one Bargain and Sell his Land, and before Inrollment becomes a Bankrupt, this Land may not be sold by the Commissioners, according to the Rule put before by *Jones*: But if he makes a Feoffment, and a Letter of Attorney to give Livery, and then becomes a Bankrupt before the Seisin delivered, these Lands in such case may be sold, *B. R. 4 Car. 1.* The reason of the difference is, in the first Case the Bargainee is in by the Bargain and Sale, and not by the Inrollment; and the Bankrupt could not by his own Act defeat this; but no Estate in the other Case passeth at all till the Livery

Livery be executed: And then in the last Case, his Letter of Attorney is revocable, and his becoming a Bankrupt before the Estate executed, is *quasi* a Countermand or Revocation in Law. The first Reason is best.

2. Lands settled in other Mens Names in Trust for the Bankrupt. Lands in other mens names

It is plain these are within the Statute.

If a Bankrupt grant his Lands or Goods, or transfer his Debts in other Mens Names, except to his Children upon Marriage (they being at the Age of Consent) or upon valuable Consideration, the Commissioners notwithstanding may sell them, and the Sale shall be good.

But if one be a Merchant, and not in Debt, and he purchase for another, or give to another, and there be no fraud in it to deceive Creditors, this is good, *March. 12. p. 32.*

H 3 of

Of Lands Purchased by, or Descended  
or Devised to the Bankrupt since he  
was a Bankrupt.

**P**ER Stat. 13 Eliz. If any person who is  
or shall be declared to be a Bankrupt,  
shall at any time hereafter purchase any  
Lands, Tenements, Hereditaments Free or  
Copy, or Offices, Fees, Goods or Chattels; or  
that any Lands, Tenements, Hereditaments  
Free or Copy, Offices, Fees, Goods or Chat-  
tels shall descend, revert or by any means  
come to any Bankrupt before such times as  
Debts due to their Creditors shall fully be sa-  
tisfied and paid, or otherwise agreed for, then  
the said Lands, &c. shall be sold as other  
Lands, &c. which the Bankrupt had at the  
time of his becoming a Bankrupt. *Vid. supra.*

This Clause is to be understood of such  
Lands which descend or revert to him,  
and which were in a remote possibility  
of ever hapning. As suppose a Father  
seised of Lands in Fee, hath issue a Son,  
and the Father dies, and the Uncle is a  
Bankrupt, then the Son dies, and the  
Lands descend to the Uncle, these could  
not be sold by the Commissioners, with-  
out this Clause in the Statute. Tho' Re-  
versions after Estates for Life or Years  
might have been sold by the other Clause  
of this Statute, or any Estate wherein  
the Bankrupt hath an Interest in futuro.

But



But tho' a Bankrupt hath the Remainder or Reversion in Fee after an Estate in Tail, yet this cannot be sold by Commissioners till it fall, because the Tenant in Tail hath power to bar this Remainder or Reversion.

Suppose a Judicial Office, or Office of Offices: Trust, which cannot be executed by a Deputy, be granted for Life, and the King grants the Reversion to J.S. for Life, he who hath the Grant of the Reversion becomes a Bankrupt, and then the Office falls, how shall the Commissioners dispose of this Office? They cannot execute it themselves, neither can they put in a Deputy. I conceive if the Officer absents, he forfeits his Office, and then the King grants it over; but this is no relief to the Creditors: Therefore Mr. Stone thinks well, the Statute doth not mean such Offices of Trust, which are annexed to the Party; but other Offices of Inheritance, as Keeper of a Forest, Warden of the Fleet, &c.

Land is devised to a Bankrupt, the Of Land devised to a Bankrupt may sell, and the Bankrupt shall not wave the Devise.

H ;

Of

# Of Lands Mortgaged, or Estates on Condition.

**P**ER Stat. 31 Jac. c. 19. *The Commissioners may Assign and Appoint such Person as they may think fit, to make tender or payment of the Money, as fully as the Bankrupt might have done; and after such tender or payment they shall have power to sell, &c. Vid. supra.*

This is in Case the Bankrupt hath Mortgaged any Lands to another. But suppose Lands are Mortgaged to him; as a Feoffment in Fee for 500 l. is made to him and his Heirs, provided that if the Feoffor do not pay such a sum of Money such a day, then for a further sum the Feoffor is to make it an Estate absolute. The Feoffee becomes a Bankrupt, and the Money is not paid at the day, the Commissioners have not power by this Act to force the Feoffor to make an absolute Fee, but Chancery will compel him.

Condition of a Feoffment, that if the Feoffor pay not such a sum, then for a further sum the Feoffor to make the Estate absolute.

A. B. makes a Lease, rendring Rent with a Clause of Re-entry, and then becomes a Bankrupt and absconds, &c. who shall enter if the Rent be unpaid? The Assignee of the Commissioners, especially if the words be in, that then it shall be lawful for the Lessor, his Heirs or Assigns to Re-enter; for tho' the Assignees

nees of the Commissioners are not the Assignees in Fact to the Bankrupt, yet they are so in Law; and especially by the Equity of this Statute: And so it should seem to be in other Cases of Entries for Conditions broken, or Distress for Arrears.

If a Lease is made to A. B. for 21 <sup>Conditions.</sup> years, provided if he do such an Act, then he shall have Fee; A. B. becomes a Bankrupt and absconds. *Quere* if the Assignee of the Commissioners shall perform this Act, and so gain the Fee? *Vide infra.*

A Merchant makes a Feoffment in Fee, <sup>Commissioners</sup> upon Condition upon payment of Mony, <sup>tender the Mo-</sup> to Re-enter, he becomes a Bankrupt, the <sup>ny on a Mort-</sup> Commissioners may tender the Mony at <sup>gage.</sup> the day, and sell the Land.

*Of Lands whereof the Bankrupt is jointly seised.*

**I**T is clear, that if two be jointly seised of Lands, and one becomes a Bankrupt, his moiety may be sold by the Commissioners, nay, tho' he be dead, and Survivorship shall not take place, *Vide infra.*

Put the Case, there are two Jointenants, and they are disseised; one of the Jointenants becomes a Bankrupt, and then dies; I question whether the Commis-

sioners shall sell in this Case? for the words of the Statute of 13 Eliz. are, *Such Use, Interest, Right or Title as such Offender might lawfully depart with*: Now before Entry he could not grant his moiety; yet he may release before he dies.

Two Women Jointenants of a Lease for years; and one takes Husband who becomes a Bankrupt; the Commissioners may dispose of the Interest of a Moiety; and yet *quart*, for Chattels real are given to the Husband if he survive; but if the Husband die before the Wife, she shall have it.

The Wives  
Land.

A Bankrupt hath Land in the Right of his Wife, it may be sold during the Coverture; and if she be a Feme Merchant the whole shall be sold.

A Feme sole is seised of Land in Fee, B. contracts with C. an Ironmonger, and D. a Working Smith only (for Money paid by them) to marry A. and then that after the said Marriage, he and A. will levy a Fine of the Land of A. to the use of C. and D. and their Heirs; The Marriage is had, the Fine is levied, C. is outlawed, D. absents. In this Case C. is a Bankrupt, but not D. and the sale of the moiety of the Land is good, *per Mr. Stone*.

The Dower of a Bankrupts Wife shall never be sold. *Aliter*, If she marry one that is a Bankrupt.

Two

Two Jointenants, one is a Bankrupt, the Commissioners seize a moiety, the Bankrupt dies, no part shall be sold by Stat. 13 Eliz. but by Stat. 1 Jac. a moiety may be sold; for that Statute saith the Commissioners shall proceed as if he were living.

Lands { Settled.  
Sold.

Settlements: What shall be accounted Fraudulent and shall be avoided, and the Sale by the Commissioners good, and what not.

Vide supra Stat. 1 Jac. c. 15. Conveyance to Children, except on Marriage, or some Valuable Consideration.

Vide Supra, Crisp and Plats Case, 1 Croke, 548.

**I**N consideration of Marriage; a man makes a Conveyance to the use of himself and his Wife, and afterwards becomes a Bankrupt; a Commission is taken out against him, and the Lands are sold by the Commissioners; the Sale adjudged good, and the Deed fraudulent. In this Case within half an year after this Settlement he became a Bankrupt; so as there seems to be fraud in the Conveyance; but this is not express in the Pleading,

Valuable Con-  
sideration.

Wife, Chil-  
dren.

Fraudulent  
Deed.

ing, as it might have been; and this is not in dispute upon a Special Verdict, but comes in question on point of pleading, which is to be taken strongly against him that pleads it; and he hath not expressed any Valuable Consideration as he might have done; as Consideration of a Portion, or performance of Articles made upon Marriage, or that the Wife had joined in selling some part of the Land.

The Wife is within the Statute 1 *Fac.* and the providing for Wife and Children is providing for himself, *Stiles Rep.* 288, 289. *Tucker and Cosh.* But I have seen this Case reported by a Grave Serjeant at Law, that the Land may not be sold, *quia guerdon pudicitiae.*

All fraudulent Conveyances, to deceive Creditors, are within this Statute.

A fraudulent Deed must be so at the beginning, for subsequent fraud cannot make it so.

If a Man purchase Land after the time of his Trading, and his being in Debt, and do purchase it in the Name of his Wife or Children fraudulently, this will be liable to sale. *Aliter*, If it be purchased before he becomes to be a Merchant, *Marsh Rep.* 34. A. purchased Copyhold to him and his Son for their Lives, the Remainder to his Wife in Fee; and after this becomes a Merchant and a Bankrupt, and solely took the Profits till he became a Bankrupt, this shall not be

be sold by the Commissioners, *Vide supra Crisp's Case*

A Settlement made by the Husband for the Jointure of the Wife, reciting that the Wife had joined with the Husband to sell part of the former Jointure in which he and she were Tenants for Life, the Remainder in Tail to the first and tenth Son, Remainder to his Heirs; by *Hales* at a Trial at Bar, this is not fraudulent, tho' he alone having no Issue might bar this contingent Remainder, *B. R. 24. Car. 2. Scot and Bell.*

Wife joins with the Husband in selling part of her former Jointure.

In an Affise between Creditors and the Bankrupts Son. It was found, that the Father by Indenture, in consideration of love which he bore to his Son, and for natural affection to him, bargained, sold, gave, granted and confirmed the Land unto him and his Heirs; this Deed was Inrolled: This Land shall not pass unless Mony had been paid, or the Estate executed, for the Use shall not pass. *Crok Jac. p. 127. Osborn and Churchman.*

Bargain and Sale. Consideration.

In a Trial at Bar; the Son and Daughter of Sir *Anthony Bateman* were Defendants in Ejectment; the Defendants admitted the point of Sir *Anthony's* Bankruptcy, but set up a Conveyance made by Sir *Anthony* to them for the payment of 1500 l. apiece, being Mony given to them by their Grandfather, Mr. *Rus- sel*; to whom Sir *Anthony* took out Letters  
of

Voluntary Con-  
veyance or not.

of Administration; *per Hales*, It is a Voluntary Conveyance, unless that you can prove that Sir *Anthony* had Goods in his Hands of Mr. *Russels* at the time of the executing it; so they proved that he had, and there was a Verdict for the Defendants, *Mod. Rep.* 76. Sir *Anthony Bate-*  
*man's Case.*

Settlement.

A Man may settle Lands on his Son before he be a Bankrupt, and if it be not by fraud and to deceive Creditors, it shall be good, ( and the fraud must be found by the Jury ) the Statute saith, *the Sale shall be good against such Offender*, and he is no Offender till he is a Bankrupt, *Fones p.* 438. *Crisp and Platt, Vide supra.*

What Sales and Assurances shall be avoided, and where the Purchasers are safe or not.

**I**T is provided by Stat. 13 Eliz. That the said Act (which enables the Commissioners to sell the Bankrupts Lands) shall not extend to any Lands, Tenements or Hereditaments Free or Copyhold, which heretofore have been assured by any such Bankrupt, or hereafter shall be assured by any Bankrupt, before he became a Bankrupt. So always that such assurance be made bona fide, and not to the use of the Bankrupt himself only, or of his Heirs; and that the  
Parties



Parties to whose such assurance hath, or shall be made, be not at or before the making such assurance privy or consenting to the fraudulent purposes of any such Bankrupt to deceive his Creditors.

And per Stat. 21 Jac. c. 19. It is provided, That no Purchaser, for good and valuable Consideration, shall be impeached by virtue of this Act, or any other Acts heretofore made against Bankrupts, unless the Commission to prove him or her a Bankrupt, be sued forth against such Bankrupt within five years after he or she shall become a Bankrupt.

Any Sale of Lands and Goods by a Bankrupt before he comes in Debt, or before his Trading, is without question good; and so are all the Acts he doth before he comes to appear to be a Bankrupt, *Marsh Rep.* 34.

If one be a Merchant, and not in Debt, and he purchase for another, or give to another, and there be no fraud in it to deceive the Creditors, this is good, *Marsh* 32.

Sir John Harrison Merchant, seised of Lands and indebted to divers persons; on Action brought against him, he conceals himself, for which he was outlawed, and *An.* 43 becomes a Bankrupt, *An.* 47 he acknowledgeth two Judgments to *Andrews*, and *An.* 1648 he makes a Lease to the Plaintiff; *An.* 1653 Commission issues

To be accounted  
a Bankrupt  
from the first  
Act of Bank-  
ruptcy.

issues out against him, and extends by Elegit 1650. the Plaintiff justifies as coming in under Valuable Consideration of 5000 l. *Per Glyn* he is a Bankrupt by the Outlawry; and also by the fraudulent Lease: But he shall be accounted a Bankrupt from the first Act of Bankruptcy, 2 *Siderfin* p. 115. *Radford versus Bludworth*; and p. 176. the Question was, if the Plaintiff shall be assured by the Clause of 21 *Jac.* 19. as being a Purchaser on a Valuable Consideration, the Bankrupt having sold above five years before the Commission sued out; when the Commission of Bankrupts issues out the Creditors shall have all the benefit of all his Estate which he had *Anno Dom.* 1643. Excepting Purchasers for a Valuable Consideration: His being a Bankrupt after the Sale, that will not hinder Judgment for the Purchaser, 1 *Keb.* 11. *Bradford and Bludworth.*

A Man purchaseth Lands of one who is a Bankrupt, for a Good and Valuable Consideration; and a Commission is not taken out within five years; this Purchaser shall not be Impeached. But if one purchaseth Land for Good and Valuable Consideration, before the Vendor becomes a Bankrupt, it's no question but he is safe; and thus is this Clause to be understood.

J. H.

J. H. a Bankrupt was committed two Months, *An. 1651.* and recommitted for another Act in 1657. then the Bankrupt sells the Term for years, whereof he was possessed, to the Defendant, and in 1660 the Commissioners sold to the Plaintiff. This Commission shall, not relate to the first Act in § 1. for the words of the Act are not, *after he shall first be a Bankrupt*; for then the earlier being a Bankrupt, would after five years be a perpetual *Supersedeas* to all Tradesmen. But if one hath sold, and then five years pass without any Act of Bankruptcy, the Purchaser is safe, and no after-Act can hurt him. But where the Bankrupt continues in Possession, any after-Act is sufficient to bind the Term, 16 Car. 2. *Spencer and Vanacre.*

Where it shall not relate to the first Act.

A Merchant sells Land *bona fide* to J. S. *Monstre les* and after becomes a Bankrupt, J. S. may *Faits.* choose to shew his Evidences.

Concerning the Sale of Copyhold Lands.

YOU may see in the recital of the Stat. 13. Eliz. c. 7. that Copyhold Lands are to be sold by Deed Indented and Inrolled in any of his Majesties Courts of Record (as other the Bankrupts Lands) but by the same Statute it is provided, *That all persons to whom any such Sale shall be made, shall before such time*

as

Fines.

as they shall enter or take any profits of the same, agree and compound with the Lord of Mannor, of whom the same shall be holden, for such Fines or Incomes as heretofore hath been most usual and accustomed to be yielded or paid therefore: And upon every such composition, the Lord for the time being, at the next Court to be holden at, or for the said Mannor, shall not only grant to such Vendee upon request, the same Copy or Customary Lands or Tenements by Copy of Court-Roll of the said Mannors for such Estate or Interest as to them shall be sold, and reserving the ancient Rents, Customs, and Services; but also in the same Court, admit them Tenants of the same Copy or Customary Lands, as other Copyholders of the same Mannor have been wont to be admitted, and to receive their Fealty accordingly.

Admittance.

Copyhold Lands are within all the Statutes of Bankrupcy, *Croke, Car. 550. Criff and Platt.*

Title to a Copyhold, how to be made by Commissioners.

Title to a Copyhold cannot be made by the Commissioners without surrender or admittance, *1 Keb. 24 Croke Car. 596.*

The Estate vested before admittance.

It is adjudged in *Croke Car. 569.* in *Parker and Bleeks Case*, that by Bargain and Sale, made by the Commissioners of Bankrupcy, the Estate of the Copyholder is vested in the Bargainee before admittance, tho' he may not enter and take the Profits till admittance: The Bargain

Bargain and Sale binds the Copyholder and bars his Estate, and he is no Copyholder after the Bargain and Sale enrolled: And when the Bargainee is admitted by the Lord, it shall have relation to the Bargain and Sale; and the Copyholder dying, his Wife shall be bar'd of her Widows Estate.

A Bankrupt purchaseth a Copyhold, and the Tenant surrenders into two Tenants Hands to the use of the Bankrupt, and now he will not be admitted. Mr. Stone makes some Quere if this may be sold by the Commissioners, but he conceives they may; and the Vendee may pay the admittance.

Tenant by Copy is disseised, and the Disseisor is admitted Tenant by the Lord. The Lord Bargains and Sells the Manor to J.S. in Fee: Disseisee becomes a Bankrupt, the Commissioners may sell the Copyhold, and the Vendee shall compound with the Bargainor, *Stone 142.*

## C H A P. IX.

*Of the disposal of the Personal Estate, or Goods of the Bankrupt: How and where the Goods of a Bankrupt, liable to Execution may be sold by the Commissioners, and where not: Of Trusts, and Bonds taken in the Bankrupts Name, with several Cases and Resolutions.*

**P**ER Stat. 13 Eliz. c. 7. *The Commissioners have Power to take such Order and Directions by their Discretions, with the Bankrupts Momy, Goods, Chattels, Wares, Merchandises and Debts, wheresoever they may be found or known, and cause the said Goods, Chattels, Wares Merchandises and Debts to be searched, viewed and appraised to the best value they may, and by Deed Indented and Inrolled, &c. to make sale of them, or otherwise to order the same for true satisfaction and payment of the said Creditors.*

And by another Clause in the said Statute, *The Commissioners have power to sell all the Goods and Chattels that the Bankrupt shall purchase, after he became Bankrupt, and all such Goods and Chattels that shall any wise come to him before such time that the Debts due to the Creditors*  
are

Purchase.

are fully satisfied and and paid, or otherwise agreed for.

Per Stat. 1 Jac. c. 15. Leases, Goods, <sup>Trusts.</sup> Chattels or Debts of the Bankrupt, by him conveyed, or procured to be conveyed or transferred to any of his Children, or other person or persons, except the same shall be purchased, conveyed or transferred for, or upon Marriage of any of his or her Children, both the parties Married being of years of Consent, or some Valuable Consideration, or transfer his Debts into other Mens Names, shall be by the Commissioners Bargained, Sold, Granted, Demised or otherwise Disposed of, in as ample manner, as if the said Bankrupt had been actually seised or possessed thereof, or the Debts were in his own Name of the like Estate or Interest to his or thair own use, at such time as he or she became a Bankrupt; and that every such Bargain, Sale and Disposition of the Commissioners shall be good and available to all Intents, Constructions and Purposes in the Law against the Offender or Offenders, his Heirs, Executors, Administrators and Assigns, and such Children and Persons as shall be subject to this Statute, and against all other person and persons, claiming by, from, or under such Offender or Offenders; and such said other persons to whom such Conveyance shall be made by the said Bankrupt, or by his means or procurement.

Debts transferred in other Mens Names.

Extent.

Kings Accountant.

Per Stat. 21 Jac. c. 19. If it happen any Lands, &c. Good, Chattels, Debts, or other Estate of any Bankrupt to be extended after such time as he or she became a Bankrupt, by any person or persons, under colour or pretence of his or their being Accountant, or any ways indebted to the Kings Majesty; then shall the Commissioners examin upon Oath, whether the said Debt were due to such Debtor or Accountant, upon any Bargain or Contract originally made between such Accountant and the said Bankrupt, &c. and his or their Servants; and if the said Bargain or Contract was originally made so, and with any other person or persons, then the said Debtor or Accountant; or for the Use or Trust of any other person or persons, then the said Commissioners shall dispose of such Lands, &c. Goods and Chattels, &c. to, and for the use of the Creditors; and that the Order and Disposition of the said Commissioners shall be good against the said Extent; and the Bargainees shall have good Remedy, to have, demand and recover the same against such person or persons as shall detain the same.

Goods transferred, and yet ownership kept on foot.

And by the said Statute of 21 Jac. c. 19. For that it often falls out, that many persons before they become Bankrupts, do convey their Goods to other Men, upon good Consideration, yet still do keep the same, and are reputed the owners thereof, and dispose the same as their



their own: It is Enacted, That if at any time hereafter, any person or persons shall become a Bankrupt, and at such time as they shall so become a Bankrupt, shall by the consent and permission of the true owner and proprietor, have in their possession, order and disposition, any Goods or Chattels, whereof they shall be reputed owners, and take upon them the Sale, Alteration or Disposition as Owners, that in every such Case, the said Commissioners or the greater part of them, shall have Power to Sell and Dispose the same, to, and for the benefit of the Creditors, as fully as any other part of the Bankrupts Estate: And for the better payment of Debts, and discouraging men to become Bankrupts, per the same Statute, If the Bankrupt shall grant any Mortgage, Goods, Chattels or Estate unto any person or persons, on condition or power of Redemption at a day to come, then the Commissioners shall assign some person to make tender or payment of the Money, or other Performance, according to the Nature of the Condition, as fully as the Bankrupt might have done: And after such tender or Payment, shall sell the said Goods and Chattels so conveyed or granted, &c. Vide this Paragraph at large *supra*.

So that you see the Commissioners have Power to Sell or Dispose the Bankrupts Personal Estate, which he had, and was possessed of at the time of his becoming a Bankrupt; and also all such

Goods and Chattels which the Bankrupt shall purchase, or which shall come and accrue to him after he became a Bankrupt.

*Observe*, They must be searched, viewed and appraised.

Sale of Goods by a Bankrupt, after Commission awarded, is void, albeit the Commissioners be never seised of the Goods, *Moore Case* 805. *Smith and Mills*.

Deed Indented.  
View.

This Statute saith, Sale by Commissioners must be by Deed Indented, and that after view of the Goods; yet a Sale by any other Deed, and before the view, is good, 2 *Rep.* 26. The Case of Bankrupts.

Goods sold in  
Market overt.

The Goods of the Bankrupt lie liable to the Sale of the Commissioners, notwithstanding the Bankrupt had sold them in Market Overt, this Sale is avoided by relation, *Siderfin.* p. 272. 2 *Keb.* 33. in *Baly and Bunnings Case*.

*How, and where the Goods of a Bankrupt, liable to Execution, may be sold by Commissioners, and how, and where not.*

**A**. Becomes a Bankrupt after an Extent, and before a *Liberate*, and the Commissioners sell these Goods to Creditors, *Per Cur'* they cannot be sold, *Croke Car.* 106, 149. *Andly and Halscy.*

This

This Case is well reported by Mr. Justice Jones, Rep. 202. Tho' the words of the Statute are, That the Commissioners have Power to sell the Goods which were his at the time that he became a Bankrupt, and altho' he becomes a Bankrupt before the *Liberate*; and altho' the Property remains in the Conusor, until the delivery by the *Liberate*; yet the Extent had bound the Goods so, that when the *Liberate* comes it defeats this, and divests the property of the Goods out of the Conusor, as to any mean Action or Incumbrance from the time of the Extent.

The Goods extended before he becomes a Bankrupt, and delivered by the *Liberate* after he became Bankrupt, cannot be sold, 2 *Siderfin*. 115. they are in *Custodia Legis*.

Execution was sued by *Ca. Sa.* the Money levied, and in the Sheriffs hands, and the man became a Bankrupt *Per Curiam*; the Money recovered in the Sheriffs hands was not assignable by the Commissioners to the Creditors; for it was *quasi in Custodia Legis*. The Case was thus, B. and his Wife brought an Action on the Case, for words spoken of the Wife; upon not guilty pleaded, and Verdict for the Plaintiff, and 5 *l.* Damages assessed, and 7 *l.* Costs, they sue Execution; and after the Money was levied by the Sheriff, and before the return of the Writ the

Plaintiff became a Bankrupt; and by the Commissioners of Bankrupts, the said 12 l. so recovered, was assigned by the Name of the Money of B. to *Blackwell* and other Creditors: The Sheriff brings the Money into Court; the Plaintiff who recovered, prayed to have the Money delivered to him out of Court; and the said *Blackwell* and the Creditors pray that the Money may be delivered to them, according to the Sale and Assignment of the Commissioners: *Per Curiam*, the Money in the Sheriff's hand was not assignable, tho' by the Judgment the Damages and Costs were ascertained and turned in *Rem Judicatam*; for it cannot be said to be the Bankrupts Money, until it be paid to him; and in the mean time it is in the hands of the Sheriff, and in *Custodia Legis*: And this Case is the stronger, because it is upon a *Ca. Sa.* and the Money paid to the Sheriff to satisfy the Execution; and none may give a Discharge thereof, but the Plaintiff who is party to the Record, and the Assignees are Strangers to the Record; and as they cannot have the benefit thereof, so they cannot acknowledge satisfaction, *Croke Car.* 166, 176. *Benson* and *Flower*, and *Jones*, 215.

M. recovered against E. one hundred pounds; the Sheriff's Bayliff takes the Goods upon *Fi. Fa. Teste 4 Junii. 6 June* He whose Goods they were, becomes a Bank.

Bankrupt. Commission of Bankruptcy was taken out the 8th of June, the *Fi. Fa.* was made the 11th of June, and executed on the Goods the 17th of June. The Plaintiff, as Assignee of the Commissioners, brings *Trover* : *Per Cur.* for the Defendant upon Special Verdict, and that the Goods were liable from the time of the *Teste* of the *Fi. Fa.* and this shall be said *Emanatio Brevis*; and the Sheriff cannot divine when a Commission will be taken out, 2 *Keb.* 33. *Bayly and Bunning, Siderfin.* p. 271. *Mesme Case.* *Per Siderfin*, the Goods are liable to Execution from the time of the *Teste* of the *Fi. Fa.* and the practice is, that the Bayliff is found guilty, if the party were then a Bankrupt; *per Keb.* in this Case, the Court agreed a right in the Creditors by the Act of Bankruptcy, and thereby the Goods are bound, tho' the Creditors have no Action till Assignment, *Vide Stat. Stat. of Frauds of Frauds and Perjuries, and Perjuries.* that the property of the Goods shall be bound only from the time that such Writ shall be delivered to the Sheriff.

A man brought an Action of Debt on a Bond, and had a Verdict, and before the day in Bank became a Bankrupt; it was moved, that the Debt was assigned over, and prayed to have the Money brought into the Court, which the Court refused, and adjudged, that Judgment could not be staid, the Assignee of the Bank-

Bankrupt being a Stranger, in *Com. B. Mod. Rep.* cited in *Moncks Case*, p. 93, and in 3 *Keb.* p. 1.

*Sci. Fac.*

On motion for G. Assignee of Commissioners to stop having Money out of Court, the Plaintiff being a Bankrupt since the Judgment; but the Judgment being affirmed before the day of the Commission sued out, the Money was ordered to be delivered to the Plaintiff, no execution being sued out, unless a Special *Sci. Fac.* and per *Twisden*, How can we take notice that he is a Bankrupt? Any execution may be stopped at that rate, by alledging, that there is a Commission of Bankrupts out against the Plaintiff. If he be a Bankrupt you must take out a Special *Sci. Fac.* and try the matter, whether he be a Bankrupt or not, which the Court granted; he may bring a Special *Sci. Fac.* as Assignee, or *Det* on the Judgment, 3 *Keb.* p. 1. *Mod. Rep.* 93.

Restitution.

Suppose after Judgment, and before Execution, one becomes a Bankrupt, and the Creditors assign this; and after the Judgment is reversed, *quare* who shall make Restitution? I conceive the Creditors are not compellable, not being Parties to the Record.

In the Case in *Dier* 67. *Stringfellow's Case*, Tho' the Goods were extended, yet they were not delivered to the Conussee, and the Writ was not returned; and the Writ of Priviledge was for Debt due

due to the King, wherein the King hath his Prerogative by the Common Law; and so it differs from *Audly* and *Halseys* Case, *Croke Car.* 148.

The Statute is where an Execution or Extent is served or executed: *Per Cur.* this is accounted the executing of an Extent, when the Goods be apprifed, and the Writ returned, *Croke Car.* 150. *Audly* and *Halsey*, *Vide Stat.* Frauds and Perjuries. So by these Cases, this *Vexata Quaestio* is well settled.

If the Bankrupt convey his Goods, Leases, Chattels to any of his Children or other Person, such Leases, Goods and Chattels shall be sold by such Commis- <sup>Leases and Goods convey-  
ed by the  
Bankrupt.</sup> sioners, except in two Cases.

1. What shall be conveyed to any of his Children upon Marriage. Or,

2. Upon some Valuable Consideration.

The Statute 21 *Jac.* Provides, that Goods Attached by Foreign Attachment shall be sold by Commissioners, which proves, that after the Statute 13 *Eliz.* until the Statute 21 *Jac.* the Commissioners had no power to meddle with Goods taken upon a Foreign Attachment, yet they are but a pledge to draw the party to answer; and if he appear, the Foreign Attachment is discharged. And <sup>Foreign Attach-  
ment.</sup> therefore before the Statute 21 *Jac.* if Goods were attached by Foreign Attachment in *London*, and before Recovery

Seizure per Sher-  
riff.

Of Goods Ex-  
tended on pre-  
sence of Ac-  
count to the  
King.

very, the party becomes a Bankrupt, and after Recovery is had, this should avoid the Sale by the Commissioners; therefore to remedy that, the Special Proviso is added in *Stat. 21 Jac.* that in this Case the Goods shall be in the possession of the Vendee as the Goods of the Bankrupt, unless the Goods were seized by the Sheriff before the Party became a Bankrupt, tho' they were seized before the *Teste* of the Commission, yet the Goods are bound by the Bankruptcy, 3 *Keb.* 480. *Bingly and Warcup.*

As to Goods Extended after such time as he shall become a Bankrupt, by such as pretend to be Accountants, or indebted to the King, the Statute directs the Commissioners to examin upon Oath, whether the said Debt were due to the Accountant upon any Bargain or Contract originally made between the Accountant and the Bankrupt, and his and their Servants: And if it appear the said Contract was originally made with any other person than the Accountant, or for the use and trust of any other person, -then the Commissioners shall Sell such Goods, and their Assignee shall have good Remedy to recover the same: So that if it appear the Original Contract (before he became a Bankrupt) was made between the Accountant and Bankrupt, bona fide, the Extent shall be good, and the Estate shall not be sold by the Commissioners.

As



As for what Remedy the Assignee shall have against those that shall detain such Goods, it may be by *Trover*, &c. the same as the Bankrupt might have had, *Vide infra*.

Trust.

Of other mens Goods, of which the Bankrupt is in possession, and reputed Owner : Or Bonds take in his name.

**T**H O' the Bankrupt (before he is a Bankrupt) convey his Goods to other men upon good Consideration, yet if he keep the same, and is reputed Owner thereof, and disposeth of the same as his own, such Goods shall be sold by the Commissioners, and accordingly hath it been resolved: If one shall to the intent to support the Credit of a Bankrupt, suffer him to have his Goods in his Custody, and to dispose of them; this shall be accounted the Goods of the Bankrupt, and not of the Owner, *Stiles Register*, 48, 49.

In Debt on Bond the Defendant pleaded, that the Obligation was made to the Plaintiff, to the use of him and other Creditors of O. and that one of the others releast; it is an ill Plea, he being a Stranger, and the matter but Equity, 2 *Keb.* 333. *Ward* and *Offley*.

*Bonds.*

*Bonds.*

**R**. indebted to S. and B. jointly; S. becomes a Bankrupt, and the Commissioners assign this Obligation to B. the Assignee must have the same Remedy as the Bankrupt had; therefore this or none, 1 *Keb.* 167. *Bolston and Ratcliff.*

**Bond Assigned.** If J. be obliged to J. S. and he before Bankruptcy assign the Bond, this is liable to the after-bankruptcy of J. S. being only suable in his name, 2 *Keb.* 331. *Backwell and Littcott.*

One becomes indebted to a Bankrupt, and he and the Bankrupt became bound for this Money to L. in Trust for the Bankrupt; a Commission issues, and this Debt is assigned to the Creditor, and good; the Bond being to his use, *Vide plus infra, Gerard and Aylmores Case.*

*Of Goods Pawned.*

**I**F the Bankrupt have conveyed away his Goods upon Redemption, then the Commissioners may assign some person to tender or pay the Money at the day; and after such tender or payment shall sell the same.

*Dispo*

*Disposition of Rent.*

**A** Rent-sock, tho' there have been no seizure, shall be sold ; Commissioners sell a Rent or Reversion, it may be good without Attornment ; it vests by the Statute.

A. makes a Gift in Tail, rendring Rent to him and his Heirs, and dies, the Rent is Arear. B. Disseisor enters and levies a Fine, and five years pass ; the Heir of A. is a Bankrupt, who was to receive the Rent : Now this Rent, and the Arrears may be sold by the Commissioners. *Vide infra.*

CHAP.

## CHAP. X.

*Of the Disposition and Assignment of the Bankrupts Debts; and what Assignment made by the Commissioners shall be good, and what not.*

**P**ER Stat. 13 Eliz. c. 7. The Commissioners are Impowred to Sell and Assign Debts due to the Bankrupt. And,

*Per 1 Jac. c. 15.* If the Bankrupt transfer his Debts in other Mens Names, they shall by the Commissioners be disposed of in as ample manner as if the Debts were in his own Name.

As to Mony Recoverd, *Vide prius.*

The words of the Statute of 1 Jac. c. 15. that fully enable the Commissioners to dispose of the Bankrupts Debts, are; *Be it Enacted by the Authority aforesaid, That the Commissioners of Bankrupts shall have Power to Grant and Assign, or otherwise to Order and Dispose all, or any of the Debts due to, and for the benefit of the said Bankrupt, by what person or persons soever, or in what manner and form soever, to the use of the Creditors of the said Bankrupt, &c. and that the same Grant, Assignment, or Disposition of the said Debts, in form aforesaid.*

aforesaid, to be made by the said Commissioners, shall so vest the Property, Right and Interest of the said Debt and Debts in the person or persons of him, her or them, to whom it shall be Granted, Assigned or Ordered by the said Commissioners or the major part of them, as fully to all intents and purposes, as if the said Bill, Bond, Bonds, Statutes, Recognisances, Judgments or Contract, whereupon the said Debt or Debts shall arise or grow, had been made to, or with, or for the said person or persons, to whom the same shall be so Granted, Assigned or Disposed by the said Commissioners; and that after such Grant, Assignment or Disposition made of the said Debts, that neither the Bankrupt, nor any other to whom any such Debt shall be due, shall have power to Recover the same, nor to make any Release or Discharge thereof; neither shall the same be Attached as the Debt of the Bankrupt, or such said other person or persons, according to the Custom of the City of London, or otherwise; but that the Assignees shall have like power to recover the same, as fully and lawfully in the Name or Names of the person or persons to whom the same shall be so Granted, &c. by the Commissioners in all respects, as the Party might have had, any Law, Statute, Custom, &c. to the contrary notwithstanding.

Foreign Attachment.

There

There is a Right in the Creditors by the Act of Bankruptcy, and thereby the Goods are bound, tho' the Creditors have no Action till Assignment, 2 *Keb.* 33. *Bayly and Bunning, Siderfin, p. 271.*

Dividing a  
Debt.

If a Bankrupt be indebted to one 20 *l.* and to another 10 *l.* and he hath a Debt due to him by Bond of 20 *l.* now the Commissioners may Assign and Divide this (*viz.*) to every Creditor a portion, part and part-like; and it seems in this Case the Assignees may sue severally for it, *Godb.* 195. See *Bradshawes Case.*

Obligee before  
Bankruptcy as-  
signs the Bond.

J. S. is obliged to J. B. and he before Bankruptcy assigns the Bond, this is liable to the after-bankruptcy of J. S. being only suable in his Name, 2 *Keb.* 331. *Backwells Case.*

Where the  
Commissioners  
have power of  
the Money only,  
on the Sale of  
Goods.

If the Goods of the Bankrupt come to the hands of A. and be sold to B. the Commissioners have power only of the Money; but on Sale to A. by the Bankrupt, the Commissioners may elect to have Money or Goods, 2 *Keb.* 348. *Micons Case.*

Obligation as-  
signed before  
day of payment.

If an Obligation before day of Payment be assigned by Commissioners of Bankrupts to a Creditor, altho' the Obligation after becomes forfeit, the Bankrupt shall never after take advantage by this; for all is become a Debt to the Creditor, *Siderfin, p. 327.* in the Case of *Robbins and Standerd*; and this disposition made by the Commissioners saves the  
the

the forfeiture of the Obligation, 2 *Keb.*  
202.

If a Bond be taken in the Name of another to the use of the Bankrupt, the Commissioners may assign that, *Noy*, 142.

Bond taken in ones Name to the use of the Bankrupt, may be sold.

In Debt the Plaintiff shews the Statute of 13 *Elix.* and 21 *Jac. c. 5.* of Bankrupts, and shews how E. C. 10 *Jac.* became a Bankrupt, and then was indebted to the Plaintiff, and that in 22 *Jac.* the Defendant becomes bound to one L. in a certain sum, which he avers was to the use of E. C. aforesaid; and upon Special Pleadings the Case was this. One becomes indebted to a Bankrupt, and he and the Bankrupt became bound for this Mony to L. in trust for the Bankrupt; a Commission of Bankruptcy issues, and this Debt is assigned to the Creditor, and the Obligee dies, and his Executor releaseth the Debt, and the Creditor brought an Action of Debt, *Per Cur.* it lies: For the Interest of the Debt is transferred to the Creditor *per Stat.* 21 *Jac.* the Bond being to his use, and for this the Release is no Bar: So it makes nothing that the Bankrupt himself was bound, for the Bond was in trust for him, and Judgment accordant, *Palmers Rep.* 505. *Gerrard and Aylmer.*

Bankrupt and his Debtor bound to L. in trust for the Bankrupt. Executor of L. releaseth; yet this Debt assignable.

A Man recovers Damages in an Action on the Case for words, and becomes a Bankrupt, *per Cur.* after Judgment when this is reduced to a Certainty, it

Damages

may be assigned: But the Case went further. The Plaintiff takes Execution for the Damages, and the Sheriff received the Money of the Defendant; it cannot be assigned so long as it lies in the Sheriffs hands, nor till he receive it, *Jones Rep.* 215. *Benson and Flower*, *Vide* this Case *devant*.

Debt on Simple  
Contract.  
Assignees Re-  
medy for Debts  
of the Bank-  
rupt.

Debt upon a Simple Contract may be assigned over to the Creditor, but the Assignee shall have no other Remedy than the Debtee himself had; and this is by Action of Debt, or Action on the Case. For if the Debtor become Bankrupt, and die, the Assignee shall not have an Action of Debt against the Executor, but he may have an Action on the Case. The Statute doth not alter the Course of the Law for Recovery of this in other nature, than the Law before allowed, and doth not give more advantage to the Assignee than the Principal Creditor had, *p. 6. Car. 1. Morgan and Green.*

There is a Proviso in 1 *Jac. c. 15*. That no Debtor of the Bankrupt shall be thereby endangered for the payment of his Debt truly, and *Bona Fide*, to any such Bankrupt, before such time as he shall understand and know that he is become a Bankrupt.

Of Payment  
before notice,  
or Commission  
sued.

*Per Hales & Tot. Curiam*, Payment by a Debtor of a Bankrupt to himself or to his Creditor before notice of the Bankruptcy, and before the Commission



mission sued forth, is a discharge against the Commissioners or their Assignee. *Quere* of the payment after the *Teste* of the Commission, and before notice, 3 *Keb.* 190. *Grove and Smith.*

A Debt assigned before a Commission sued out, was ruled good, in *Yardly and Knights Case.*

Payment to a Bankrupt after notice is void; but if there is no notice, or if the Party be compelled to pay the Suit before any Commission sued out, it's a good discharge. Anciently, till Commission sued out, the Debtor ought not to repay, tho' he had notice of Bankruptcy, *M.* 25. *Car.* 2. *B. R.* *Prim and Beal*; and *Stoover and Hastings Case*, 3 *Keb.* 298. payment before a Commission sued out is good enough, *Andrews and Spicers Case.*

*What Goods, or other Estate of the Bankrupt may be sold and assigned by them, Vide supra.*

THE Commissioners may assign Debts in Trust, *Noy* 142. *Calchmans Case, Vide supra.*

The Commissioners here may sell a Bankrupts Goods in *Ireland*, and Irish-*Ireland.* men may sue the Commission.

K 3

They

They may assign a Judgment, 2 Keb.  
706, Eclor and Jacobson,

*Leases disposed by the Commissioners.*

Proviso not to  
sell.

**I**T is made a *Quare* in Mr. Stone, if a Lease for years is made with a proviso, he shall not alien, and the Commissioners sell; whether this be a forfeiture? I hold it is not; for the Act of Parliament which empowers them to sell to pay Debts, shall not be controled by such an inofficious proviso.

A Lease for years is devised to A. if he live so long, the Remainder to one B. the Commissioners shall not sell the possibility, *Vide supra*.

*Advowsons, Presentations.*

**A** Bankrupt hath an Advowson, and the Church becomes void, the Commissioners sell the Advowson, the Vendee presents, the sale is good, but the presentation not; yet I think it is not Symony.

Symony.

One grants an Advowson to a *Feme Covert*, sole Merchant, the Church becomes void; the Husband in consideration that J. S. enters into Bond to Preach twice a Week, presents him to the Benefice: The *Feme* becomes a Bankrupt, the

the Husband dies, the Feme waves the the Grant, the Commissioners within six Months sell the Presentation and the Advowson, this is a good Sale of the Advowson, but the King shall present.

*Common.*

**A** Had Common for a Cow in Pasture to him and his Wife, and to the Heirs of their two Bodies begotten; A. the Husband grants the Common to E. the Wife dies without Issue, E. is a Bankrupt; this is neither Land, Tenement nor Hereditament which may be sold by the Commissioners, *Stone p. 123.*

*Rents, Vide supra.*

*Herriots, Reliefs.*

**L**ORD and Tenant; the Lord is a Bankrupt, the Tenant dies, the Commissioners shall sell the Money or Debt due for the Relief: So of an Harriot: So of the amerciements of a Leet.

*What Assignment by the Commissioners shall be good, and what not.*

**T**HE Commissioners may assign Money to one, and Corn to another of the Creditors, 2 *Bulst.* 26. But,

They may not make an Assignment to many Creditors together for their Debts, but it must be severally, to every one a-part, or it is not good, *Godb.* 195, 196. the Commissioners may assign a Debt due to the Bankrupt to one of his Creditors for the payment of his Debt, but may not divide it and assign it more than one. *Ibid.*

But the constant course and practice is to make an Assignment to one or more Creditors in Trust for themselves and the other Creditors.

One Joint obligee becomes a Bankrupt.

R. is indebted to S. and B. jointly ; S. becomes a Bankrupt, and the Commissioners assign this Obligation to B. 1 *Keb.* 167. *Boylstons Case.*

The Assignment is a sufficient bar against the Parties, tho' it appear not what was proportionable, 1 *Keb.* 491.

One of Creditors Assignees accepted a part of his Debt.

The Plaintiff in *Audita Querela* counted that Sir H. B. to whom he was indebted, became a Bankrupt, and that certain Creditors had his Debt assigned to them ; and that one of them accepted part of his Debt in satisfaction of the whole.

whole. The Defendant demurs, because he had not shewed what were the Debts of the Creditors, that so his payment might appear proportionable to the Debts; but *per Cur.* it's well enough, especially being an Action brought by one that is a Debtor; and the very Assignment is a sufficient bar against the Parties; and if there be any Surplusage, the Defendant hath remedy in Chancery, 1 *Keb.* 491. *Fitzwilliams* against *Lewis*. Surplusage.

If the Plaintiff had been indebted in as great a sum as the Bankrupt had been indebted to him, and yet his Debt assigned, this Assignment had not been good; but this Debt was here assigned *inter alia*, and so other Debts to be intended; and this may be good. The Defendant here ought to have demanded Oyer of the Indenture, and of the Schedule to the same annexed, in which the several Debts are contained. If there be more in this than his proper Debt, then the Assignment is not good; but the same being here with an (*inter alia*) this is good and sufficient, 2 *Bulst.* 26. *Powell* *vers.* *Stuff* and *Timewell*. *Uncore, vide Stiles, c. 2.*

*Decla-*

## Declaration.

A different sum  
assigned.

**I**N an Action on the Case, the Plaintiff Declares, That the Defendant was indebted to one *Gode* in the Sum of 43 *l.* 1 *s.* for, &c. And being so indebted, promised to pay him; which *Gode* was indebted to the Plaintiff, and became Bankrupt; whereupon a Commission was sued out, and the Commissioners assign debita p̄ *Gode* in quadam *Schedula* continē p̄ summam 43 *l.* 1 *s.* to the Plaintiff, &c. Defendant pleads he made no such Promise to *Gode*. And by Special Verdict it was found that the Defendant was indebted to *Gode* but in 41 *l.* 1 *s.* which he promised to pay; and that the Commissioners assigned debita p̄ *Gode* mentionae in quadam *Schedula* continē p̄ summam 43 *l.* 1 *s.* to the Plaintiff: And if this be the same Promise that the Plaintiff hath declared upon, they find for the Plaintiff. It was said, that upon the whole Record it appears, that the Plaintiff hath not made a good Title to his Action, for he hath alledged the Assignment to be of a Debt of 43 *l.* 1 *s.* whereas the Debt was but 41 *l.* 1 *s.* And this being an entire thing, will not pass by the Assignment of a greater Sum: But it was resolved,

1. That

1. That it was the same Promise; for if *God* himself had brought the Action, he should have recovered upon this Verdict, and the Assignment by the Commissioners vests the Debt in the Plaintiff, and he hath the same Remedy to recover that the Bankrupt had. And,

2. The Assignment is not in question, and that which they found touching the Assignment is not material; however the Assignment is not laid to be of such a Sum, as by that name, for then the Court inclined to believe it would not have been good, *Allen Rep. p. 28. Baker and Edmonds.*

The Commissioners of Bankrupts have power to Sell, Grant and Assign, but they cannot bring an Action; their Assignees must bring all Actions, *Mod. Rep. p. 30.* But *per Twissden*, Commissioners of Bankrupts might have an Action of Trover, if they did actually seize any Goods of the Bankrupt, as they might by Law.

It is dangerous for Commissioners of Bankrupts to Assign Debts particularly; as in *Baker and Edmonds Case.*

One that is a Bankrupt is *felo de se.* Mr. *Stone* puts the Question, whether the Commissioners may assign the Goods to be sold for the Creditors, or whether the King shall have them? And resolved it for the Creditors. For, saith he, very well; tho' it is resolved in the

Whether the King shall be preferred before a Subject.

Lady

Lady *Hales* Case in *Plowden*, that when two Titles come together (*viz.*) the Kings and a Subject, the Kings title shall be preferred; yet the King by these Acts hath given away his Title to the Creditors. And yet in my Opinion this may admit a Dispute; the Judges never construing an Act of Parliament to give away the Kings Right, but wherein he is mentioned; and so is the Opinion in *Jones Rep.* 203. as to this Statute.

The like Case is, A Bankrupt hath a Term, and is a Recusant convict, Whether the King or the Creditors shall have the Term?

So; Whether the Creditors by the Commission, shall have the Goods of an outlaw'd person, or the King.

A Debt for an  
Amerciament  
in a Lect.

A pain of 10 l. is laid upon a *Resiant* to reform a publick Nufance made by him before such a day, and at next Court he is presented: The Lord becomes a Bankrupt, the Commissioners sell all the Debts of the Bankrupt to A. A. shall have Action of Debt for this Amerciament, *Stone p.* 149.1

A. sues an Execution of a Statute Merchant, and the Conisors Land is Extended at too high a rate, and refused by the Extendor, and delivered to the Jurors, B. defeats the Execution by extending an elder Statute. A. is a Bankrupt, the Commissioners sell all his Debts, the elder Statute is satisfied, and the Jurors will not enter, the



the Vendee shall have a *Sci. Fa.* against the Tenant by the elder Statute, and the Terrtenants, and the Jurors to revive the former Execution, *Stone p. 149.*

*Sci. Fa.* to revive a former Execution by Vendee.

Two Tenants in Common recover Damages in Trespals; the one dies, the other is a Bankrupt; all the Damages shall be sold by the Commissioners.

A Bankrupt recovers Damages by an erroneous Judgment, the Commissioners assign them to the Creditors, who recover them in Execution; the Judgment is Reversed; the sale is good, but the Assignees shall make restitution, *Vide 3 Keble.*

Damages Assigned, and then the Judgment reversed.

## CHAP.

## CHAP. XL

*Of Actions brought by the Assignee : Of the Commissioners for the Recovery of Debts, or Goods of the Bankrupt : Of Declarations thereupon : Of Actions brought by the Bankrupt himself ; and the Forms of Declarations at large.*

**D**E B T S were assigned by the Commissioners to the Creditors, and they sued Actions in their own Names for the Debts, and good, *3 Croke 105. Bradshaws Case.*

They shall have the same Redemedy as the Bankrupt himself might have had, *1 Keb. 167.* The Statute doth not alter the Course of the Law for Recovery of this in another nature than the Law before allowed, and doth not give more advantage to the Assignee, than the Principal Creditors had, *Pasch. 6. Car. 1. Morgan and Green.*

Action on the Case, for an Escape of a Committe of the Commissioners of Bankrupts against the Sheriff of *Bristol.* The Commissioners put him into Goal for refusing to answer Interrogatories, *Vide supra, Cap. 5.*

The

Assignee shall have Debt on a Bond: Tro-  
ver, Det on Contract; Indeb. Assump-  
sit: Action on the Case, &c. and other  
Remedies as the Bankrupt might have.

**A** Ssignee shall have Trover. If  
the Goods of the Bankrupt  
come to the hands of A. and be sold by  
B. no Trover lieth for the Mony or Goods,  
but the Commissioners have only power  
of the Mony. But on the Sale to A. by  
the Bankrupt, the Commissioners may  
elect to have Mony or Goods, 2 *Keb.*  
348. *Micons Case*.

*Trover.*  
Commissioners  
power of the  
Mony, and not  
Goods sold.

*Trover* lies of Conversion between the  
Bankruptcy and Assignment: It was held  
no *Trover* lay, but on specially shewing  
the Bailment before and Conversion  
Mean; yet it hath been held to lie ge-  
nerally, 3 *Keb.* 294. *Welleampton* and  
*Danby*.

In Debt by an Assignee of Com-  
missioners of Bankrupts, the Defendant  
waged his Law *Instantor*, the Debt being  
on single Contract between the Defen-  
dant, and E. the Bankrupt, 2 *Keb.* 360.  
*Puckridge* and *Brown*; *Siderfin*, p. 372.  
*Mesme Case*, 3 *Keb.* 337.

Wager of Law.

An Action on the Case on *Indebitatus*,  
*Assumpsit* to pay Debt assigned by  
the Commissioners of Bankrupts, 3 *Keb.* 625.  
*Coply* and *Dockmanque*.

In

What kind of  
Privity is trans-  
ferred.

Rent.

In Assignment of Debts by the Commissioners, there is nothing but a naked thing in Action transferred, and no Estate or Reversion to which it may be annexed, and therefore Privity of Contract must be transferred, or otherwise nothing shall be transferred: But if a man seised in Fee, makes a Lease for years, reserving Rent, and after he becomes a Bankrupt, and the Commissioners of Bankrupts assign over the Reversion and the Rent, there the Assignee shall have an Action of Debt upon the Privity of the Estate, and not upon Privity of the Contract, 1 *Sanders* 240. *Thursby and Platt*.

Action of *Trover* lieth by the Assignee of one Partner a Bankrupt, against the other, 2 *Keb.* 750. *Thomas and Day*.

*Of Actions brought by the Bankrupt himself.*

**I**N *Trespas* by a Bankrupt against a Stranger, he cannot plead the Plaintiff hath done such an Act to make him a Bankrupt, 2 *Keb.* 32.

Debt certain.

The Plaintiff may have *Trespas* or *Covenant*, &c. where the Damages are uncertain, but any Debt certain is assignable.

*Indebitatus* by the Plaintiff, being a Bankrupt, the Defendant prayed to be discharged on Common Bail, in regard the Debts are assigned, and so the Commissioners

missioners must bring the Action; and this Assignment may be given in Evidence; the Court discharged him upon reasonable Bail (*viz.* of 100 *l.*) the Debt being 1500 *l.* 1 *Keb.* 372. *Holt* and *Scafgrogy*.

Of Declarations by Assignees of Commissioners of Bankrupts.

**N**O place of Assignment by Commissioners is alledged, *per Curiam* its Place of Assignment. *ill*, 3 *Keb.* 345. *Copleys* Case.

In Action of Debt brought upon the Statute of Bankrupts, the Plaintiff laies in his Declaration the Debt due to him, & *quod vigore Statuti p̄dicti Actio accrebit*. *Per Cur.* the Plaintiff ought not in his Declaration to mention his several Creditors; but this ought to come on the other side, to set forth that there were no other Goods but those which are named, and there were other Creditors, but the Plaintiff is not to set forth this in his Declaration, it being sufficient for him only to set forth his own debt due to him, and that *virtute cuius Actio accrebit*. Plaintiff need not mention the several Creditors, but only his own Debt due to him.

It was excepted to the Declaration, that it is uncertain, because it is not expressed upon what Statute the Action is brought, but *per Curiam* it is good; for these words in the Declaration (*vigore Statuti p̄dicti Actio Accrebit*) shall be referred. *Vigore Statuti*, how to be referred.

L

refer-

referred unto the Statute which gives the Action unto the Creditor upon the Assignment by the Commissioners, and this is only the Statute 1 Jac. c. 15. These are general Statutes, and therefore notice must be taken of them, 2 Bulst. 26. *Powell versus Stuff and Timewell.*

*Monstre del Obligation.*

*De* on Obligation assigned by the Commissioners, and doth not shew the Obligation; wherefore it was demurred. *Per Cur.* it's good enough, without shewing it in Court; because he comes in by Act in Law, and hath no means to obtain the Obligation, *Croke Car. p. 209. Gray and Feilder.*

*Wager of Law, Vide supra.*

Divers Debts were assigned to the Plaintiffs, being Creditors, by the Commissioners, upon the Statute 13 Eliz. of Bankrupts; and they sued an Action in their own Names for the Debts. *Per Cur.* it well lies; for it is a Debt transferred by Parliament, and being upon a Contract, the Defendant waged his Law, and was admitted thereto; for tho' the Parliament transferred the Debt, yet it is not any Debt of Record: But as he might have waged his Law against the Bankrupt, so he may against the Plaintiffs, *Croke Jac. 165. Vide supra in Jones Rep.*

The Statute 1 Jac. gives an Action to the Assignee in his own Name, but he must declare specially.

The

The Form of a Declaration by Assignees:  
Of the Commissioners of Bankrupts  
against a Debtor.

**H**on<sup>or</sup>ab<sup>le</sup> **F.** **B.** nuper de **W.** in Com<sup>missariis</sup> Sur emissit:  
**S.** Chapman sumonie fuit  
ad respond<sup>endum</sup> **P.** **S.** & **J.** **A.** de plico  
quod reddat eis 41 l. quas eis debet  
& iniuste detinet, &c. Et unde iidem  
**P.** & **J.** p<sup>ro</sup> **W.** **A.** Acto<sup>rum</sup> suum dicunt qd  
cum p<sup>ro</sup> **S.** — die — Anno, &c. apud  
**W.** in poch, &c. emissit de quodam  
Petro Elston de **W.** Leatherfeller  
quatuor scaplos Papiri Anglice Reams  
of Piller-Paper, p 20 s. duodecim bun-  
delas filii Anglice White Thred p 20 s  
(ac sic diversas seperales pcellas) sol-  
vens p<sup>ro</sup> **S.** Thome Elston scilicet cum inde  
requisit<sup>us</sup> fuisset; que quidem separa-  
les summe in toto se attingunt ad 47 l.  
5 s. 4 d. Cumq<sup>ue</sup> p<sup>ro</sup> **P.** Petrus Elston 10  
die Julij Anno, &c. indebitat<sup>us</sup> fuil-  
let eis **J.** **A.** ac quibusdam **A.** **B.** &  
**J.** **A.** & diversis alijs psonis Credito-  
tor<sup>um</sup> p<sup>ro</sup> **P.** Petri Elston (ipsis **J.** **A.** **A.**  
**B.** & **J.** **A.** & p<sup>ro</sup> **S.** Petro Elston ex-  
istent subditis natis huj<sup>us</sup> Reg<sup>is</sup> Angl<sup>ie</sup>)  
in diversis denario<sup>rum</sup> sumis in toto se  
attingen<sup>tes</sup> ad 1000 l. legis monte Angl<sup>ie</sup>  
ip<sup>os</sup> Petro Elston sic indebitae exi-  
stent ac p<sup>ro</sup> 47 l. 5 s. 4 d. p<sup>ro</sup> **S.** Petro  
Elston p<sup>ro</sup> p<sup>ro</sup> **S.** minime solue existent

L 2

idem

Act del Bank-  
ruptcy.

Petition.

idem Petrus E. postea selt (tale die  
& Anno) apud L. in poch & warda  
p<sup>r</sup> (eod<sup>m</sup> J. L. & alijs Creditorib<sup>9</sup> p<sup>r</sup>  
Petri E. de debitis suis p<sup>r</sup> minime  
satisfacere existend<sup>m</sup>) incepit Custodire  
domum suam Anglice did begin to  
keep his Houle ibid<sup>m</sup> existend<sup>m</sup> ad intenti-  
onem defraudand<sup>m</sup> Creditores suos p<sup>r</sup>  
de veris debitis suis p<sup>r</sup> ipsum P. Elston  
debit. Et superinde eod<sup>m</sup> 10 die Aug.  
Anno, &c. sup<sup>r</sup>dice apud L. in poch &  
warda p<sup>r</sup> manifeste devenit decocto<sup>r</sup>  
(Anglice) became a Bankrupt qui qui-  
dem P. Elston tempore quo ip<sup>s</sup>e sic ut  
p<sup>r</sup>fertur devenit decocto<sup>r</sup> Anglice a Bank-  
rupt fuit & adhuc est subdit<sup>9</sup> nat<sup>9</sup> hui<sup>9</sup>  
Regni Anglie videlicet apud Lond<sup>m</sup>  
p<sup>r</sup>dice in poch & warda p<sup>r</sup> ac tunc &  
p<sup>r</sup> multos annos ante tunc in ead<sup>m</sup>  
poch & warda p<sup>r</sup> querebat faculta-  
tem suam vivendi Anglice did seek  
his trade of living p<sup>r</sup> viam emendi &  
vendendi Ac cum postea selt (tali die  
& Anno) apud Westm<sup>m</sup> in Com<sup>m</sup> assid<sup>m</sup>  
ad petitio<sup>m</sup> p<sup>r</sup> A. B. J. L. J. D. &  
aliozum Creditorum p<sup>r</sup> P. Elston tunc  
Thome dom<sup>m</sup> Elsmere Dn<sup>o</sup> Cancellar-  
io Anglie exhibie & fac<sup>r</sup> p<sup>r</sup> remedijs  
suis versus p<sup>r</sup>lac P. Elston tunc ex-  
istend<sup>m</sup> decocto<sup>r</sup>em (Anglice a Bankrupt)  
in hac pte hend<sup>m</sup> iisdem Abi Jacob &  
Ioh<sup>e</sup> & ceteris Creditorib<sup>9</sup> p<sup>r</sup> P. El-  
ston de debis suis p<sup>r</sup> tunc minime sa-  
tisface) quedam Commissio dicti Dom<sup>m</sup>  
Regis



Regis super Statuta contra decocto-  
res Anglice Bankrupts edic & pbiis sub  
Magno Sigillo dice Dom Regis An-  
glie Sigillae & hic in Cur a plac ge-  
ren dae apud Westm pō 16 die, Ec. Commission  
Anno, &c. quibuldam J. S. Ali J. S.  
Ali J. H. Mercator A. H. Mercator  
& W. A. Mercator directi fuit p quam  
quidem Commissionem dice Dom Rex  
dedit plenam potestatem & authorita-  
tem pdice Commissionari quatuor vel  
tribus eorū quorum pō J. S. vel H.  
S. unum esse voluit juxta separalia  
Statuta de decoctorib⁹ Anglice Bank-  
rupts in hujusmodi casu edic & pbiis  
in dicta Commissione mencione non so-  
lum concernd pō decoctorem Anglice  
Bankrupt corpus pō decoctoris, terras  
libera tenementa & customari bona de-  
bita & alias res quascunq sed etiam  
concernd omnes alias psonas que p  
concelamentum clameum vel aliter of-  
fenderet Anglice shall or do offend tan-  
gend pō pmissa vel aliquam ptem  
inde contra intentionem & proposi-  
tum dictorū Statutorum vel utriusq  
eorum ad faciend & erigend scdm dicta  
Statuta & utrumq eorum omnes &  
qualibet rein & res quascunq tam erga  
& p satisfactione & solutione pdice  
Creditorum quam erga & p oib⁹ alijs  
intentionib⁹ & propositis scdm ordina-  
tionem & pvisionem eorūdem Statu-  
torū per quam quidem Commissionem  
L 3 idem

idem Dominus Rex voluit & debet in  
mandatis qđ pđ Commissionari quatuor  
vel tres eorū quorum pđ J. S. &  
H. S. unum esse voluit ad procedendū  
ad executionem & complementū pđ  
Commissionis scđm veram intentio-  
nem & ppositum dictorum sepecialium  
Statutorum & utriusq; eorum cum  
omni diligentia & effectū secundum  
specialem fiduciam dicti Domini Regis  
in illis repositam; put p eandem  
Commissionem plenius liquet & appa-  
ret Virtute cuius quidem Commissio-  
nis & vigore Statutorum pdictorū pđ  
H. R. & W. p meliori remedio Credi-  
torum pđ post maturam deliberationem  
inde capē postea scilicet 5 die, &c. apud  
London in poch & Warda pđ p quan-  
dam Indenturam assignationis inter  
ipsos H. R. & W. ex una pte & col-  
dem Petrum Jacob & Jacobum ex  
altera pte factam, cuius alteram par-  
tem Sigillis ipsorum H. R. & W.  
signat idem P. J. & J. in Curia  
pferunt, cuius dat est die & Anno mē-  
supra dice testae existit qđ cum placu-  
erit Regie Majestati p Commissionem  
suam sub Magno Sigillo Anglie Si-  
gillatē gerend datē 16 die, &c. Anno  
Regni sui 11 directē pđ J. S. H. S.  
J. H. R. H. & W. R. dantem plenam  
potestatem & auctoritatem eis vel ali-  
quibus quatuor aut tribus eorum  
quorum pđ J. H. vel H. S. unum esse  
voluit,

Assignment.

Recital.

voluit, p executione Statutorum tan-  
 gen ordines p decoct Anglice Bank-  
 rupts quorum unum editum fuit in  
 Parlamento inchoat & tene apud  
 Westm p<sup>re</sup> 19 die Maij Anno, &c. in-  
 titulac Actus p meliori relebio Cre-  
 ditor contra eos qui devenirent decoct  
 Anglice Bankrupts vel aliquem eorum  
 sup Corpus terras bona debita p<sup>re</sup> P.  
 Ellison qui devenit decocto: ea intenti-  
 one qd tam Creditores p<sup>re</sup> P. Ellison  
 essent ratabiliter & pportionabilie sa-  
 tisface de debitis suis in tunc quanc  
 status p<sup>re</sup> P. Ellison extenderet, quam  
 erga & p omnib<sup>us</sup> alijs materijs in-  
 tentionib<sup>us</sup> & ppositis scdm ordinatio-  
 nes & pvisiones dictorum Statuto-  
 rum & utriusq<sup>ue</sup> eorum prout p p<sup>re</sup> Com-  
 missionem & Petitionem eidem annex<sup>am</sup>  
 liquere potest p<sup>re</sup> Commissionarij p  
 debita executione inde juxta officio-  
 rum eorum debitum pesserunt in eis-  
 dem scdm equitatem & purpoze An-  
 gllice purport p<sup>re</sup>dictorum Statutorum &  
 Commissionis & p eo quod indemerunt  
 p examinationem p<sup>re</sup> P. Ellison & alio-  
 rum qd circa ( tali die & Anno ) P.  
 Ellison secrete remanebat Anglice did  
 koop himself secret in Domo sua in  
 Fryday-street London & recusabat col-  
 loquium cum Creditorib<sup>us</sup> suis vel ire  
 foras ex pposit ipsium custodire a secijs  
 & arrestationib<sup>us</sup> Creditorum suorum  
 ac deferre & impedire eos a recupe-  
 ratione

Assignment.

racone debitorum suorum & sic eo modo  
 induxit seipsum Anglice did bring him-  
 self infra periculum Anglice within  
 the compass predictorum Statutorum  
 de decottozib<sup>9</sup>, & fuit eos tempore pos-  
 sessionat<sup>9</sup> ut in iure suo proprio de di-  
 versis mercimonijs, merchandizis,  
 bonis, utensilib<sup>9</sup>, & pecuniarum sum-  
 mis, & fuit diversa debita tunc ei  
 debenda ad magnum valorem, pars  
 quorum quidem mercimoniorum, mer-  
 chandiz<sup>9</sup>, bonorum, debitorum, & sum-  
 marum pecunie debenerunt ad manus  
 diversarum personarum, quarum no-  
 mina quam etiam particulares parcel-  
 le quorum mercium, merchans, bono-  
 rum summam pecunie ac debitorum  
 sunt specificae & contene in schedula  
 indente per Indenture annex<sup>9</sup> iidem  
 Commissionarij p & in consideratione  
 mille librarum currene monete Anglie  
 solvend<sup>9</sup> p eisdem P. J. & J. put in  
 Indentura p<sup>re</sup>dicta postea mentionabat<sup>9</sup>  
 & ex pte eorumdem P. J. & J. con-  
 vene p tanto quantum legitime potue-  
 runt, concessissent barganizassent ven-  
 didissent & allocassent Anglice set over  
 & p eandem Indenturam barganiza-  
 verunt vend<sup>9</sup> assign<sup>9</sup> & allocaverunt  
 eisdem P. J. & J. & eorum assign<sup>9</sup> om-  
 nia & singula p<sup>re</sup>dicta bona mercimon-  
 merchandiz<sup>9</sup> utensilia debita & sum-  
 mas pecunie & quamlibet ptem &  
 pcellam inde que legitime potuissent  
 ven-

vendere, & que debuerant reman-  
sissent in manib' p'dictarum psonarum  
quarum nomina contene suere in sche-  
dula p'd' p'dictae Indenture annex' hend'  
& tenend' omnia p'dicta bona, mercim'  
merchandiz' deba summas pecunie ac  
omnia & singula p'dice barganizae  
vendie & assignae p'missa, ac quamlibet  
ptem & pcellam inde, eisdem P. J. & J.  
executorib' administratoib' & assign'  
suis imppetuum. Et iidem P. J. &  
J. p seipsis executori administratori &  
assign' suis & p quolibet eorum con-  
venerunt p'miser concess & agreeberi  
ad & cum p'fate J. S. Hen' Joh' Har-  
per Rob' & Wolse & ad & cum utroq;  
& quolibet eorū & utriusq; eorū exe-  
cutorib' & assign' p eandem Indentu-  
ram q's iidem P. J. & J. exerce & al-  
sign' sui & quilibet eorū cum omni con-  
venienti celeritate sectarentur Anglice  
will sue arrestarent implacitarent &  
utentur eorū & cuiuslibet eorū optimis  
medijs & ope p leges hujus Regni  
seu alia legitima media, recuperare  
capere vel recipere de p's personis in  
p's Indentura & Scheda p'd' eid'  
Indenture annex' mentionae eorum  
heredib', executorib', vel aliquo eorū  
p'dicta bona mercimonia, merchand u-  
tensilia deba & summas pecunie vel  
verum valorem inde & q's P. J. & J.  
heres exec administe vel assign' sui vel  
aliqui eorū ad aliquod temp' possi da-  
tura

Covenants

tum Indenture p<sup>o</sup> non acquietarent  
 relax' seu exonerat' vel causat' seu p-  
 curat' fore acquietat' relax' vel exone-  
 rat' p<sup>o</sup>ditas p<sup>o</sup>sonas in p<sup>o</sup>dicta Indent-  
 ure vel indentata Schedules p<sup>o</sup>dictae Inden-  
 ture annex' mentionat' heredi administe-  
 rat' vel assignat' suos vel aliquem eor<sup>u</sup> de  
 ab p<sup>o</sup> bonis mercand' merchand' uten-  
 sil' debis veris, summis pecunie, seu  
 de vel ab aliqua p<sup>o</sup>te vel p<sup>o</sup>cella eor<sup>u</sup>  
 et tantummodo tal' qual' iidem P.  
 J. & J. essent accomptabil' p<sup>o</sup> Com-  
 missionari' seu trib<sup>o</sup> eor<sup>u</sup> ad minus  
 quorum, &c. fore unum. Et iidem  
 P. J. & J. p<sup>o</sup> seipsis execue administ-  
 rat' assignat' suis & p<sup>o</sup> quolibet eor<sup>u</sup> con-  
 venei, concesser, &c. q<sup>o</sup> super recupe-  
 ratione & receptione p<sup>o</sup>dictor<sup>u</sup> bonor<sup>u</sup>,  
 &c. & summarum pecunie, seu alicui-  
 us partis inde, iidem P. J. & J.  
 exec admi<sup>o</sup> vel assignat' sui de tempore  
 in tempus infra 10 dies post quamli-  
 bet requisitionem eis fieri p<sup>o</sup> p<sup>o</sup>dictis  
 Commissionariis vel aliquos tres eo-  
 rum facerent iustum & verum comp<sup>o</sup>-  
 tum omnium talium summe & sum-  
 marum pecunie qual' ipsi vel eor<sup>u</sup>  
 aliqui reciperent p<sup>o</sup> aliquib<sup>o</sup> p<sup>o</sup>dictae mer-  
 rimod' vendit' vel p<sup>o</sup> debis solue seu  
 vel super aliqua compositione conce<sup>o</sup>-  
 eadem, p<sup>o</sup> Commissionariis vel ali-  
 quib<sup>o</sup> tres eor<sup>u</sup> vel alicui p<sup>o</sup>sona  
 p<sup>o</sup>sonis quas ipsi in Scriptura nomi-  
 narent & appunctuarent, existend' &c.

Account.

ditoy<sup>m</sup> plac<sup>o</sup> p<sup>r</sup> Elson, qui sedm<sup>o</sup> p<sup>r</sup>dicta Statuta consiliiuerent oneri p<sup>r</sup>dictae Commissionis : Et sic computantes qd<sup>o</sup> idem P. J. & J. seu exee<sup>s</sup> admin<sup>o</sup> vel assign<sup>o</sup> sui vel aliqui eor<sup>u</sup> immediate super quolibet tali Comput<sup>o</sup> solverent & deliberarent seu causarent solvi & deliberari p<sup>r</sup>dictae Commissionari ut p<sup>r</sup>o est in tali modo & forma seu talib<sup>o</sup> plone vel plonis qual<sup>o</sup> p<sup>r</sup>o Commissionari nominarent & appunctarent scdm<sup>o</sup> p<sup>r</sup>dicta Statuta vel utrunq<sup>ue</sup> eor<sup>u</sup> & p<sup>r</sup>o Commissionem omnes tales summam & summas pecunie qual<sup>o</sup> ille vel illi reciperent ut p<sup>r</sup>o est : Excepe & reserbae eidem P. J. & J. exee<sup>s</sup> & assign<sup>o</sup> suis omni tal<sup>o</sup> rationabil<sup>o</sup> summa & summis monete qual<sup>o</sup> essent disburse<sup>s</sup> seu expendie p<sup>r</sup> & erga recuperationem & receptionem p<sup>r</sup>o bonorum mercim<sup>o</sup> mercim<sup>o</sup> sume vel summam pecunie ut supradice est put<sup>o</sup> p<sup>r</sup> eandem. Indentur inter al<sup>o</sup> plenius appareret. Et idem P. J. & J. in tal<sup>o</sup> die quod p<sup>r</sup>o debitum 48 l. 5 s. 4 d. in Schedula p<sup>r</sup>dicta inter alia p<sup>r</sup>dictae Indenture annex<sup>o</sup> & inter alia idem P. J. & J. p<sup>r</sup> Commissionari p<sup>r</sup>o assign<sup>o</sup> & p<sup>r</sup>o debitum 48 l. 5 s. 4 d. superius specificae fore debitum est unum & idem debitum & non aliud neq<sup>ue</sup> diversum & est tam ad usum p<sup>r</sup>o P. J. & J. quam ad usum reliquorum Creditorum p<sup>r</sup>o P. Elson p<sup>r</sup> quod ac vigore Sta-

Averment.

Statutor p̄ actio accrebit iisdem P.  
J. & J. ad erigendū & hendū de plac  
Francisco p̄dice 48 l. 5 s. 4 d. p̄di-  
ctusq; Franciscus de 7 l. 4 s. 5 d. inde  
iisdem P. J. & J. postea satisfecisset  
p̄dictus tamen f̄ licet sepius requisit  
p̄ 41 l. inde residū eisdem P. J. & J.  
nondum reddidit sed, Et. Tr. 13 Jac  
Rot. 3365.

*Det per Assignee of the Commissioners  
of Bankrupcy, upon a Bond made to  
the Bankrupr.*

**W** B. queritur de T. R. de Long-  
lane in poch Sancti Sepul-  
chri London nistro pistore alias dicit  
T. R. de ead Civitate nistro pistore in  
custodia Mari, Et. de plito quod red-  
dat ei decem lib leglis monete Anglie  
quas ei debet & injuste detinet pro ei  
videt qd cum p̄ T. 11 die febr An-  
no Regni Dom Caroli nunc Regis  
Anglie, Et. nono apud Lond p̄ videt  
in pochia beate Marie de Arcub<sup>o</sup> in  
warda de Cheap<sup>o</sup> London p quoddam  
scriptum suum obligatorium sigillo  
ipsius T. sigillat Curies dicit Dom  
Regis nunc hic ostens cujus dat est  
eisdem die & Anno cogn se teneri &  
firmie obligari cuidam J. B. nup̄  
de London Upholster in decem libris  
solvendū eis J. cum inde requisit<sup>o</sup> esset.  
Cumq;



Cumq; etiam p̄ J. postea scilicet quarto die Martij Anno Regni dice Doms Caroli nunc R̄s Anglie undecimo apud London p̄ in poch & warda p̄ indebitae fuisset eid̄ W. & diversis alijs Creditoribus ipsius J. existē subdie nae hujus Regni Anglie in diversis sepali<sup>9</sup> denariozum suis in toto se attingē ad duas mille libras legalis monete Anglie ipsos J. sic eid̄ W. & p̄ alijs Creditorib<sup>9</sup> ipsius J. indebitae existē ac p̄ 10 libris in manibus ipsius T. ut p̄fertur insolue existē Idem J. p̄dicto quarto die Martij anno undecimo supradice apud London p̄ a Domo sua mansional decessit (Anglice) did depart ea intentione ad defraudand<sup>9</sup> Creditores suos p̄ de veris & justis debitis suis eis p̄ ipsum J. debie p̄ quod Creditores sui impediti fuer<sup>9</sup> Anglice were delayed de obtentione justorum & verorum debitorum suorum Et superinde p̄ J. J. eod̄ quarto die M. Anno undecimo supradicto apud London p̄ manifeste devenit Decoctor (Anglice became a Bankrupt) & fuit & adhuc est subdit<sup>9</sup> natus hujus Regni Anglie (videlicet) apud London p̄ in paroch & warda p̄ & adhuc & p̄ multos annos ante tunc querebat modum suum vivendi (Anglice) did seek his trade of living p̄ viam emendi & vendendi Cumq; etiam postea scilicet decimo die Martij anno un-

Act des Bank-  
ruptcy.

Commission.

undecimo supradice apud Westm in  
 Com Midds ad petitionem p<sup>r</sup> W. &  
 quorundam aliorum Creditorum p<sup>r</sup> J.  
 tam p<sup>r</sup> seipsis quam p<sup>r</sup> alijs Credito-  
 rib<sup>9</sup> ipsius J. honbli viri Tho<sup>9</sup> Dom  
 Coventry adhuc & adtunc d<sup>no</sup> custos  
 Magni Sigilli d<sup>ni</sup> Dom Regis  
 nunc Anglie exhibie & face p<sup>r</sup> remedijs  
 suis versus p<sup>r</sup>fac J. cum existend de-  
 coctorem (Anglice a Bankrupt) in  
 hac pte hend<sup>u</sup> eis W. & alijs Credito-  
 rib<sup>9</sup> p<sup>r</sup> J. de debitis suis p<sup>r</sup> tunc mi-  
 nime solue sibe satisfacere existend que-  
 dam Commissio Dom Regis super Sta-  
 tue contra decoctores (Anglice Bank-  
 rupts) edie & p<sup>r</sup>vis sub Magna Sigil-  
 lo ipsius nuper Regis Anglie sigillat  
 & hic in Curia plac<sup>u</sup> gerend<sup>u</sup> das apud  
 Westm p<sup>r</sup> p<sup>r</sup> decimo die Martij anni  
 undecimo supradice quibusdam J. &  
 R. C. C. R. N. D. Gen J. W. Gen  
 & R. N. Gen direce fuit p<sup>r</sup> quam qu-  
 dam Commissionem idem Dom Reg nunc  
 adtunc & ibidem debet plenam pote-  
 statem & auctoritatem p<sup>r</sup> Commissiona-  
 rijs quatuor vel trib<sup>9</sup> eorum quorum  
 p<sup>r</sup>fac J. & C. unum esse voluit iuxta  
 separalia Statuta de decoctozib<sup>9</sup> An-  
 glie Bankrupts, & quodlibet eorum in  
 hujusmodi casu edie & p<sup>r</sup>vis in dicta  
 Commissionem mentionat non solum de &  
 concernend dictum decoctorem Anglie  
 Bankrupt corpus suum terras liberas  
 & custumar bona debita & alia que-  
 cumq

cumq; sed etiam concernend omnes ali-  
as personas que p concealament clameum  
vel aliter offendissent vel offenderent  
(*Englisc do shall and offend*) concer-  
nend pmissa vel aliquam ptem inde  
contra intencionem & pposit ( *Anglice*  
*the meaning* ) eorundem Statutorum  
vel alicujus eorum, & agere & exequi  
scdm pdicta Statuta & eorum alicu-  
jus omnes & singulas rem & res tam  
erga & p satisfactone & solutione Cre-  
ditorum pd quam erga & p omnibus  
altis intencionib<sup>9</sup> & ppositis scdm or-  
dinationem & pvisionem eorundem  
Statutorum dictus Dom<sup>9</sup> Rex p eand  
Commissionem volens & pceptiens eisdem  
Commissionari<sup>9</sup> quatuor vel trib<sup>9</sup> eo-  
rundem quorum p<sup>re</sup>ae J. G. & C. C.  
tunc esse voluit ad pcedend ad execu-  
tionem ad accomplmentum pd Com-  
missionis scdm veram intencionem &  
pposit ( *Anglice meaning* ) eorundem  
separatum Statutorum & alicuj<sup>9</sup> eo-  
rundem cum diligentia & effectu p<sup>re</sup>  
specialis fiducia dicti Dom<sup>9</sup> Regis in  
eis p<sup>re</sup> fuit prout p eandem Com-  
missionem plenius apparet Virtute cu-  
jus quidem Commissionis & vigore Sta-  
torum pdice pd J. G. A. B. & C. W.  
tres Commissionari<sup>9</sup> pd' & pd' J. B. p  
meliori remedio pd' W. B. & p alijs  
bonis causis ipsos ad inde specialiter  
moven<sup>9</sup> post maturam deliberationem  
inde cap<sup>re</sup> selt decimo quarto die, &c.

Anno

Assignmet.

Anno Regni, &c. p quoddam scripto suum indentae sigillis eorundem J. B. M. & J. M. sigillae ad e cum consensu creditorum pd' J. B. qui Commissionem pd' psecue fuissent & impetrassem. Ac etiam ad e cum assensu pd' J. M. decetozis & in executione Commissionis illius assignaverunt & extraposuerunt (Anglice have set over) eid' M. M. pd' debitum decem librarum inter alia pfae J. B. p pfae C. R. in forma pd' debite hend' tenend' petend' demand' sectand' recuperand' & recipiend' debitum pd' quamlibet ptem & pcellam inde eidem M. executorib' administratozib' & assign' suis tanquam bona sua ppria & ad suum pprium usum & beneficium imppetuum absq aliquo Comp' p ipsum M. B. executores vel assign' suos alicui psonae vel aliquibus psonis quibuscunq p eisdem fiend' p quod ac vigore Statutorum pd' actio accrevit eid' M. B. ad exigend' & hend' de pdice C. R. pd' decem lib pd' tamen C. licet sepius requisitus &c. pd' 10 l. pfae J. M. nondum solvit sed illi ei hucusq solvere omnino contradixit & adhuc contradicit ad damnum ipsius M. quinq librarum Et inde pducit sextam, &c.

CHAP.

CHAP. XII.

*Of Pleadings in respect of the Statutes of Bankruptcy by the Debtor or by the Commissioners to Actions brought against them, and what Pleas shall be good, and what not.*

**I**N an Action on *Assumpsit* for Wares sold; the Defendant pleads such a day the Plaintiff became a Bankrupt, and yet is so; to which the Plaintiff demurred, because he saith not he was a Tradesman, 3 *Keb.* 134. which should be, *Hanslop* and *Hales*; yet the Plea seems to be ill, *Vide* Case *sequens* and 2 *Keb.* 32.

In Debt on Obligation, the Defendant pleaded, before the Action brought the Plaintiff became a Bankrupt; to which the Plaintiff demurred. *Per Curiam*, it's an ill plea; and until assignment be made, the Debtor is defenseless: Payment before Commission sued out is good enough, and so it is before his Debt is assigned; *quare de hoc*. Judgment *pro Quer* 3 *Keb.* 616. *Andrews* and *Spicer. Q.*

*Det* on Obligation for performance of Articles for payment of Money for Rent; Defendant pleads that the Plaintiff was a Bankrupt, and that the Defendant paid the

Plea, that the Plaintiff was Bankrupt before Action brought, ill.

M

the

the Mony to the Assignees of the Commissioners of Bankruptcy, *Tompsons Entrys*, Fo. 166.

*Det on Obligation*, on Oyer the Defendant *protestando* that this Debt was not assigned by the Commissioners of Bankruptcy of *Holt*, for plea faith, that this was not due to the Plaintiff, & *alijs Creditoribus* of *Holt*; to which the Plaintiff replied it was so due, and the Defendant demurred specially as double. *Twifden* conceived the Replication ill, and that the Assignment to the Plaintiff should be shewed, that being traversable as well as the Bankruptcy: This Case seems not to be well reported here, therefore let us see how it is reported three or four Leaves after. In *Det on Obligation*, Defendant pleads that it was in trust for *Holt* who is a Bankrupt, & *virtute Commissionis quibusdam* Commissioners, &c. this Debt was assigned to *Ashly* and *Penning* & *alijs Creditoribus*, &c. to which the Defendant demurred specially for doubleness; the Court conceived the Bankruptcy traversable as well as the Assignment, but the Issue is well enough, 3 *Keb.* 710, 737. *Jonas* and *Boulton*.

Action on the Case, *Indebitatus Assumpsit* to pay a Debt assigned by the Commissioners of Bankrupts; the Defendant pleaded the Statute of Limitations, and that *Causa Actionis non accrevit infra sex Annos*. Mr. Stone hath made a *Quere* whether

Bankruptcy traversable as well as the Assignment.

Stat. Limitations.

whether he that comes in as Creditor, and hath a Debt made over unto him by the Commissioners, may not be barred by the Statute of Limitations. Mr. *Billinghurst*, p. 129. very roundly answers the matter, that he shall be barred. But it seems this is not within the Statute of Limitations: And certainly the Commission being dated within the six<sup>1</sup> years, the plea should have been *infra sex annos*, after the Commission. Let us distinguish: If a Commission be not taken out within six years (as it may be so long, and longer except in case of Purchasers, for then it must be taken out within the space of five years) then perhaps to this Action, being on Contract, the Defendant may plead the Statute of Limitations; but if Commission be taken out within the six years, and Assignment made within six years, then the Statute seems to preserve this Debt by the Assignment, it being to relieve Creditors against such base Fraud: But to allow this Knavish Plea to cover former Knavery of this high Nature, it is intolerable, *Vide in 3 Keb.* 615, 645. in *Coply and Dockmins Case*, an *Anonymous Case* cited by *Weston*, that it was adjudged in C. B. that this Debt is not within the Statute of Limitations.

In *Det* on Bond given to the Plaintiff to perform Covenants between the Defendant as Assignee, for the benefit of

On Covenant  
by Assignee to  
account.

M 2

the

the other Creditors, and the Commissioners of Bankrupts, which was, *inter alia*, to give an account to the other Creditors, or to either of their Assignees on request: The Plaintiff said he had not given him an account in his Replication; (the Defendant having pleaded performance in bar) to which the Defendant demurred, because the Covenant is joint as to Creditors, to which the Court inclined, there being a subsequent Clause several as to Assignees, 1 *Keb.* 815. *Selby and Walker*: But *per Keeling*, the Covenant is several, according to the interest and subject matter, and each of the Creditors may call the party to an account, but the Covenant was by the Defendant and his Brother, which was severally to do their endeavours to bring in the Debts, & *super requisitio eis facta*, they would account; therefore both are bound to account jointly, tho' the Bond is only given by one. Court held it ill, the Plaintiff being no party to the Covenant, p. 843. *Mesme Case*.

In *Trespals* by a Bankrupt against a Stranger, he cannot plead the Plaintiff hath done such an Act to make him a Bankrupt, 2 *Keb.* 32.

In Debt by Assignee of the Commissioners, the Defendant pleads *nil debet*, and wages his Law; and by the Court he may well, tho' the interest and power to sue in his own name be good to the Plain-



Plaintiff by the Statute of Bankrupts: But otherwise if the duty it self had been originally due by the Statute, *Noy p. 112. Osborn and Bradshaw. Vide supra.*

In *Assumpsit*, the Defendant pleads that after the Promise, and before the Action, the Plaintiff became a Bankrupt, denying himself to Creditors, of which the Plaintiff had notice. *Per Cur'* payment to a Bankrupt after notice, is void; but if no notice, or if the party be compelled to pay by Suit, as here before any Commission is sued out, it's a good discharge. Formerly till Commission sued out, the Debtor ought not to repay tho' he had notice of Bankruptcy, *3 Keb. 231. Prin and Beal.*

Payment before notice, or Commission sued out

*Of Pleadings to Actions brought against the Commissioners.*

**I**N Trespass against the Commissioners of Bankrupts, if the Plaintiff declares of the entry into his House, the Defendant may not plead not guilty, and give the Special Matter in Evidence; but he ought to plead the Commission of Bankruptcy, and all the Special Matter; but if it had been for taking of Goods only, he may plead not guilty generally, *Litt. Rep. 356.* By the Statute *1 Jac. 15.* It is Enacted, *That if any Actions of Trespass, or other Suit shall happen hereafter to be brought against any Commissioner author-*

To the breaking the House it must be specially pleaded.

Aliter, As to taking Goods.

vised by the Statute made in the 13th of Eliz. for Bankrupts, or any other person or persons having Authority by vertue, or under the Commission, authorising the said Commissioners for the doing or executing any matter by force of the said Statute, or this present Act, that the Defendant or Defendants in any such Action or Suit may plead not guilty, or otherwise justifie that the Act or thing whereof the Plaintiff or Plaintiffs complained was done by authority of the said Act of 13 Eliz. or in this present Act respectively, without expressing or rehearsal of any other matter or circumstance contained in either of the said Acts, and without enforcing him or them to shew forth their Commission authorising the said Act or thing, whereunto the Plaintiff shall be admitted to reply, that the Defendant did the fact supposed in the Declaration, of his own wrong, without any such Cause alledged by the said Defendant; whereupon the issue in such Action shall be joined to be tried by twelve men; and upon trial of that Issue, the whole matter to be given on both parties in Evidence, according to the very truth of the same: And if Verdict upon such Issue shall pass for the Defendant, the Defendant to have his Costs.

Now the reason of the difference seems to be, that the Commissioners may plead the General Issue, or any thing done by the Statute of 13 Eliz. and 1 Jac. and neither of those Statutes do authorise the breaking open Houses; but that Authority

thority is given by 21 Jac. and no such General Pleading is provided for by that Statute.

Action on the Case was brought by the Plaintiff for the breaking his House, and taking his Goods away, by pretence of the said Commission; whereas he was no Bankrupt, *per quod* he was impaired in his Credit. Defendant pleads the Plaintiff brought an Action of Trespass for the same Trespass against him, and that he recovered therein; It is no Plea, *Stiles Rep.* 3. 201, 202. *Watson & Norbery.*

Former Action  
of Trespass no  
Plea to an Action  
on the Case.

As for the Form of Pleas, *Vide postea.*

## CHAP. XIII.

*Of the Venue, Evidence, Trial.**Of the Venue.*

**I**N Aſſion of *Trover* by Aſſignee of the Commiſſioners, the *Viſne* may be laid in *Middleſex*, whence the Commiſſion iſſueth, or in the place where the Cauſe of Aſſion ariſeth, at the Plaintiffs Election; the Commiſſion being the Foundation of all, *H. 15. & 16. Car. 2. Bayly and Bunnings Caſe.*

*Evidence, Trial.*

Depositions.

**T**HE Evidence offered, were the Depoſitions before the Commiſſioners of the Bankrupt, which *per Curiam* is good enough; but the Defendants Council oppoſing them, they proved *viva voce* what the Bankrupt confeſt.

Witness.

In a Suit in Chancery on Aſſignment of Lands, &c. the Depoſitions which were taken before the Commiſſioners, not allowed as Evidence; but a Special Commiſſion taken out: The Defendant excepted to a Witneſs becauſe he was a Creditor, and ſo might come in before divi-

division made: But after four Months after any Dividend duly made, he is a good Witness; for no other Dividend shall be intended, 2 *Keb.* 348 *Bets* and *Mico*.

What Evidence sufficient to prove a man Bankrupt, *Vide Siderfin*, 411. Sir *Anthony Batemans Case*, & *alias supra*.

On Trial at the Bar in *Trover* and *Conversion* for 4000 l. which was the Money of Sir A. C. a Jew, and upon his Bankruptcy, assigned by the Commissioners of Bankrupts to the Plaintiff, and exception was taken to the Evidence, because the Assignment of the Commissioners was 18 No. 67. and the Plaintiff demands the Money of the Defendant 21 No. 67. and the Declaration is of the same Term (*Sil't*) *Mich.* 67. which relates to the first day of the Term: And so Action brought before Cause of Action. But *per Cur.* an Action in *B. R.* shall not be said to commence, until the Defendant hath made his appearance, which is not until Bail filed, (if it be by Bill) *Siderfin*, p. 373. *Lidcott* and *Backwell*.

*Maxims of Bankrupts.*

ONCE a Bankrupt and always a Bankrupt, *per Glyn.* 2 *Siderfin*, 115. *Vide prius*.

Statues favourably to be construed for the Creditors, *Vide le Stat.* 2 *Siderfin*. 115. He

He that is a Bankrupt to one Creditor,  
is a Bankrupt to all, *Stiles Reg.* 48.

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## CHAP. XIV.

*Of Distribution : Notice to Creditors :  
Of Dividend, and the Form ; as al-  
so the Form of a Deed of Distribu-  
tion.*

*Of Distribution, Vide prius sub Titul  
Assignment.*

**T**HE Commissioners may sell  
and prepare for Distribution  
presently upon the execution  
of the Commission ; but till the four  
Months are past, they may not proceed  
to Distribution, *Huston, p. 38.*

*Per Coke, and Vinch. 10 Jac. Reven  
vers. May,* The Commissioners may di-  
vide a Debt upon Obligation.

Distribution must be to every one of the  
Creditors a portion, rate and rate-like, ac-  
cording to the quantity of his or their Debt,  
2 Rep. 25, 26.

Commissioners ought to make several  
Distribution to several Creditors, and  
not to mak a joint-Sale or Assignment to  
several Creditors: For if he owe to A. 20l.

to

to B. 20 l. and to C. 5 l. a joint Sale or Assignment to A. B. and C. is not according to their power given by the said Act 13 Eliz. but if by the Special Verdict it appears that the Debt was due to the Plaintiffs jointly, then the joint Sale is good, 2 Rep. 26.

If a Bankrupt be indebted to one 20 l. and to another 10 l. and he hath a Debt due to him by Bond of 20 l. Now the Commissioners may assign and divide this (*viz.*) to every Creditor a portion, part and part-like; and the Assignees it seems may sue severally for it, *Godb.* 195. See *Bradshaw's Case*.

*Per Stat. 21 Jac.* Judgmentees, Conisees, Attachers, *per foreign* Attachment, if there be no Extent sued and executed upon any the Lands, &c. Goods and Chattels of the Bankrupt before the time of his Bankruptcy, shall only have a rateable part with other Creditors for their just Debts, *Vide Prims* Cap. 5.

If any Distribution be made of any part of the Estate, no Creditors are to be admitted after, that come not in before, *Hob.* 287. *vide supra* Cap. 6. *Fuller* and *Lance* in *Chancery*.

Notice

*Notice to Creditors of making a Dividend;  
upon paying Contribution Mony, and pro-  
ving their Debts.*

**W**E whose Names are subscribed, being the major part of Commissioners named and authorised in the Commission of Bankrupt awarded against A. B. of, &c. the Four Months since the the date and suing forth of the said Commission, having been long since elapsed and expired; and the Creditors who prosecute the same, having desired that we should proceed to make a Dividend of the Estate by us already discovered and assigned, as by the Statutes we are impowred, do therefore by these Presents give fourteen days notice thereof, and that we do intend and appoint to meet for making the said Dividend, on *Friday* the first day of *September* next ensuing, by Ten of the Clock in the Forenoon of the same day, at the *Irish* Chamber in *Guildhall, London*; and such Creditors who do intend to come into the said Commission for their respective Debts, are to take care to pursue the directions of the said Statutes, in paying in their Contribution-mony, according to our former Order in this Affair, lest they be excluded the Dividend; and they are also at the same time and place, to come pre-



prepared to make due proof of their respective Debts; dated the 18<sup>th</sup> day of August, in the fifth year of, &c.

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## CHAP. XV.

*Of Bankrupts : Where there are Partners, and Joint-stocks.*

**A**N Action of *Trover* well lieth by the Assignee of one Partner a Bankrupt, against the other, p. 23. *Car. 2. B. R. Thomas and Day*, agreed at a Trial.

If there be two Partners, and one breaks, you shall not charge the other with the whole, because it is *ex maleficio*: But if there are two Partners, and one of them die, the survivor shall be charged for the whole. If he be sworn before the Commissioners of Bankrupts, he is admitted no Partner, *per Twisden, Mod. Rep. 45.*

If one for a time deal in a Trade, and after he forsakes his Trade, but leaves his Stock in the hands of another, and he hath part of the gain, and is partaker of the loss; if such a one after desert and conceal himself, he is a Bankrupt

rupt within the Statute, *Palmer's Rep.* 325. in the Case of *Hayler and Hall*.

*Craven & al'* and *Knight*, &c. In Chancery. The Bill sets forth that the Defendant *George Widdows* being indubted to the Plaintiffs, became bound to them in several Bonds; and the said *Widdows*, and the Defendant *Berman* for several years past, were Copartners, and *Widdows* by Articles of Copartnership was intitled to two thirds of the whole Stock, and the Defendant *Berman* to one third part; the said *Widdows* and *Berman* 25 *August* last became Bankrupts, and a Commission of Bankruptcy was awarded against them; the Commissioners of Bankrupts assigned all the Estate of the said Bankrupts to the Defendant *Knight* and others, and refuse to let the Plaintiffs Creditors of the Bankrupts to come in, and intend to divide the said Estate amongst the Joint-Creditors of the Bankrupts, by reason whereof the Plaintiffs Debts will be utterly lost.

Joint Debts to  
be paid out of  
the Joint-Stock.

The Defendants insist, that it was agreed by Indenture of Copartnership, that all such Debts as should be owing on the Joint-Account should be paid out of the Joint-Stock; and at the end of the Partnership each Copartner take and receive to his own use his share of the Joint-Stock, and that the Joint-Stock or Trade should not be charged with the private or particular Debts of either of the

the Partners, but that each should pay their private Debts out of their particular Estates, not included in the Joint-Stock : That if both the said Parties should be living at the end of the first three years of the six years, that the said *Berman* should come in Joint-Partner accordingly ; and during the said Joint-Trade, the Copartners became jointly indebted to the other Defendants, *Knight*, &c. in 6000 *l.* and that *Widdows* became indebted to the Plaintiffs, as aforesaid, without the consent of *Berman* ; and the Money due upon the said Bonds was not brought into the Account of the Joint-Stock ; and the said *Widdows* was only a Surety, and received none of the Money ; and the Defendants insisted, that the Joint-Creditors ought to be first paid out of the Estate of Partnership ; and that the Commissioners have no power to grant the Joint-Estate to pay the Plaintiffs, they being separate Creditors of *Widdows* : And if a *Surplus* of the Joint-Estate, after the Joint-Creditors paid, then the Plaintiffs can have but a joint-moiety of such *Surplus*, towards their satisfaction, the said *Bermans* moiety being not liable to pay the said *Widdows* his separate Debts ; and the Debts then claimed were the proper Debts of the said *Widdows* ; and yet after all the Joint-Debts are paid, there will be an overplus ; so that thereby the said *Berman* will

Separate Creditors.

Creditors.

will be discharged, and have Money paid unto him : But if the Plaintiff, and other separate Creditors of *Widdows* be admitted to the Joint-Estate, there will not be sufficient to pay the Joint-Creditors ; so that thereby not only *Bermans* Estate will be applied to pay *Widdows's* Debts, but will be liable to the Joint-Creditors. But there can be no division of the Joint-Estate whereby to charge any part thereof with the private Debts of either Party ; and till the Joint-Debts are paid, and till division made of the *Surplus*, both parties are alike interested in every part of the said Joint-Stock ; that the Commissioners have no power by the Commission to administer an Oath to the Plaintiffs for proof of their Debts, they claiming Debts from the said *Widdows* only ; and the Commission is against *Widdows* and *Berman* jointly, and not severally, and therefore cannot admit the Plaintiffs Creditors.

The Court declared, that the Estate belonging to the Joint-Trade, as also the Debts due from the same, ought to be divided into moieties, and that each moiety of the Estate ought to be charged in the first place with a moiety of the said Joint-Debts ; and if there be enough to pay all the Debts belonging to Joint-Trade, with an overplus, then such overplus ought to be applied to pay the particular Debts of each Partner ; but if sufficient

ficient shall not appear to pay all the Joint-Debts; and if either of the said Partners shall pay more than a moiety of the said Joint-Debts, then such Partner is to come in before the said Commissioners, and to be admitted as a Creditor, for what he shall so pay over and above the moiety; and was decreed accordingly.

*Per North, Chief Justice.* If there are Accounts between two Merchants, and one of them becomes a Bankrupt, the Course is not to make the other, who perhaps upon stating the Accounts, is found indebted to the Bankrupt, to pay the whole that was originally intrusted to him, and to put him for the recovery of what the Bankrupt owes him, into the same condition with the rest of the Creditors; but to make him pay that only which appears due to the Bankrupt on the foot of the Account. *Aliter*, for Accounts between them, after the time of the others becoming a Bankrupt, if any such were.

One Merchant is only to pay what is due to the other Merchant on Account.

N

CHAP.

## C H A P. XVI.

*Of other things to be done, or the Con-  
sequentials after Examination, Dis-  
covery and Distribution.*

*Remedy for the Creditors for the Remain-  
der of their Debts.*

**B**Y the Statute 13 Eliz. cap. 7. It is Enacted, That if the Creditors of the Bankrupt be not fully satisfied, or otherwise contented for their Debts and Duties, by the ways and means before specified and declared; that then the said Creditor or Creditors, and every one of them shall, and may have their Remedy for the Recovery and Levying of the residue of their said Debts or Duties, whereof they shall not be fully satisfied, paid or otherwise contented in form aforesaid, against the said Offender or Offenders, in like manner and form as they should or might have had before the making of this Act. And that the said Creditor or Creditors, and every of them, shall be only barred and excluded by vertue of this Act, of, and for every such part and portion of the said Debts and Duties, as shall be paid, satisfied, distributed or delivered unto him or them by order of the said

said persons, as is aforesaid; and of no more portion or parcel thereof.

Suppose the Assignee of the Commissioners hath sued a Debtor of the Bankrupt, and recovered upon Bond made to J. S. and distribution is made to the Creditors, amongst whom J. S. was one, and he is not satisfied: He sues the Bankrupt himself upon the Bond formerly made to him, and which was produced and proved before the Commissioners; in whose name shall he Sue, and how shall he Declare? The Act gives him leave to Sue in like manner and form as he might have done before the making of this Act: So that I conceive he may Sue in his own Name; but when he Declares, he must confess what part he hath received, but not set forth how, and which way he received it. Q.

To shew how the Law hates a Knave, and favours honest Creditors, I shall set down a short Case, which tho' not very pertinent to the matter in hand, yet it discovers how that a man may in some Cases recover the Remainder of his Monies, tho' he hath given a Release.

A Scrivener runs away with 2000*l*. with which he was intrusted to lend out, and absconds himself; and after some time writes to the party, that if he will take 500*l*. of his Mony, and give him a Discharge, he should have it; which he did, not knowing how to come by his

Decree for Mony against a Mans own Release.

Mony ; yet after the Creditor was relieved in Chancery for the rest, notwithstanding his own Release, *Inter Dr. Lake and Deane* ; for by Lord Egerton, *Volenti non fit injuria, si dolo sit inductus ad consentiendum.*

*Of the Commissioners Account to the Bankrupt, and of the Overplus of the Estate, if any be.*

**B**Y the Statute 13 Eliz. cap. 7. It is Provided and Enacted, *That* such of the said Commissioners as shall put the said Commission in execution, shall upon Lawful Request to them made by the said Bankrupt, not only make a true Declaration to the same Bankrupt, of the employing and bestowing of their said Lands, Tenements, Offices, Fees, Goods, Chattels and Debts so paid and satisfied to their said Creditors, but also make payment of the overplus of the same (if any such shall be) to the said Bankrupts, their Executors, Administrators or Assigns.

By the Statute of 1 Jac. c. 15. It is further Enacted, *That* such of the said Commissioners as shall put the said Commission in execution, shall upon Lawful Request to them made by the said Bankrupt, not only make a true Declaration to the said Bankrupt, of employing and bestowing of his, her or their said Lands, Tenements and Hereditaments,



reditaments, Offices, Fees, Goods, Wares, Monys, Chattels and Debts, which shall be paid and satisfied to their said Creditors, as is in like Case limited and appointed by the said former Statute, made in 13 Eliz. but also make payment of the overplus of the same, if any such shall be, to the said Bankrupts, their Heirs, Executors, Administrators and Assigns; and that the said Bankrupts, after the full satisfaction of the said Creditors, shall have full power and authority to recover and receive the Residue and Remainder of the Debts to them owing.

If the Bankrupt die, yet his Executors shall have an Action against the Commissioners to account. *Quare*, If all the Commissioners die, whether the Executors, or Executor of the Survivor shall be accountable.

*What Remedy the Bankrupt, or Creditor, or others may have in Case of Misdemeanor against the Commissioners.*

**I**F the Commissioners do not pursue the Acts of their Commission, in such Case the party hath no other Remedy but to put in a *Traverse* contrary *Traverse* to the finding of the Commissioners, that he is a Bankrupt, and say he is not a Bankrupt, 8 Rep. 121. For a Certificate of the Commissioners, that a man is a Bankrupt, is no Estoppel to the Party;

but that he may aver against this, and *Traverse* that he is not a Bankrupt: The Commissioners are not Judges, but have only an Authority, and the Party grieved hath no other Remedy, not by Writ of Error or otherwise.

If the Commissioners will not pay a Creditor his rateable part, he shall have his Action of Debt, *per Stone*. Chancery I conceive will relieve more properly.

A Decree was made 4 *Jac. inter Wood and Hayes*, to relieve one which had double taken from him (as a Concealer), by vertue of the Statute of Bankrupts, upon indirect dealing by Commissioners in the execution of the Commission.

Death of the  
Bankrupt.

*Note*, By the Statute 1 *Jac. c. 15*. It is Enacted, that after any Commission of Bankrupts sued out, and dealt in by the Commissioners; if the Offender happen to die before Distribution, yet nevertheless the Commissioners shall, and may in that Case proceed in Execution in, and upon the said Commission for, and concerning the Offenders Goods, Lands, Tenements, Hereditaments and Debts, in such sort as they might have done, if the Party Offender were living.

Allens

Allens Case in Chancery.

**E**wards, a Citizen of York, that had April 1 Jac. R.  
 born the Office of Sheriff there, be-  
 ing indebted to Allen, Habersley and others  
 of London, for Wares, became Bankrupt,  
 because he suffered himself to be outlaw'd  
 at the Suit of Mistress Young of York, for  
 Debt.

Allen and Habersley, and some other Octob. 1 Jac. R.  
 Creditors of London, by a Petition to  
 Lord Chancellor, procured a Commission  
 upon the Statute of Bankrupts against  
 Edwards to Sir Thomas Bennet, Sir Willi-  
 am Rumney, Mr. Nicholas Fuller and Mr.  
 Richard Aldworth.

The Commissioners did sell by Deed Decemb. 3 Jac.  
 of Bargain and sale enrolled, all the  
 Bankrupts Lands to Allen and Habersley  
 for 400 l. the Land being then worth  
 1400 l. but sold it so cheap as 400 l. in  
 respect of Incumbrances, being Mort-  
 gaged to Alderman Boles his Son, and  
 with a Statute of 2000 l. to Alderman  
 Boles himself, defeazanced to pay the  
 Mortgage Mony, and two Hundred  
 pounds more lent by the Alderman; and  
 all such other Sums as Edwards then owed  
 to Alderman Boles or Smith, or should  
 owe for Wares delivered, or to be deli-  
 vered within three years following; and  
 it stood also incumbered with a Statute of

Lands sold by  
 the Commissio-  
 ners with In-  
 cumbrances be-  
 fore he became  
 a Bankrupt.

Last Certificate  
 of the Commis-  
 sioners proved  
 this.

N 4

1500 l.

1500*l.* to Alderman *Boles* himself defeazible, first for 800*l.* and after upon 200*l.* more lent for 1080*l.* (the 80*l.* being interest) and it stood also incumbered with a Lease for 80 years of part made to one *Cheney*; all which Incumbrances were made long before he was Bankrupt and before he became indebted to *Allen* or any of the *Londoners* which sued out the Commission.

May 4. Jac.

First Certificate.

Agreement by the Commissioners with the Bankrupt to take 10*s.* in pound.

2. Of the Creditors bound for the payment of it.

And the Bankrupts Lands conveyed to them for security.

The Agreement certified by the Commissioners. Refusal to perform the Agreement.

After this Sale the Commissioners, and *Allen*, and all the other Creditors that sued out the Commission upon full consideration had of the Estate of the Bankrupt, how it stood incumbered with the Mortgage, Statutes and Lease, made agreement with the Bankrupt and his Friends, to this effect, that the Creditors would take ten shillings in the pound for their due Debts, and *Smith* and *Wood* (*Wood* only being a Creditor that joined not in the Commission) undertook on the behalf of the Bankrupt, to be bound for payment thereof to the Creditors; And it was agreed that *Allen* and *Abersley* should convey the Bankrupts Lands to them for their Security, which agreement was certified by the Commissioners; and they did also certify that *Allen* after this agreement (being so Godly and Charitable) refused the agreement, and sought the advantage of Law to the great loss and hindrance of the rest of the Creditors, and to the utter undo-

undoing of *Edwards* the Bankrupt, his Wife and Children for ever.

In execution of this Agreement 12 *l.* Depositions 10 *s.* was paid to one of the Creditors, prove this. and Books drawn by Mr. *Fuller*, and ingrossed ready for perfecting of the assurances.

All which notwithstanding *Allen* refusing the Agreement with *Haberley*, preferred a Bill in Chancery against *Edwards*, Alderman *Boles*, *Smith*, *Cbeney*, *Wood* and *Edwards* his Father (a man 80 years old) complaining that the Mortgage, Statutes and Lease were all fraudulent, and the Mony being paid, were kept on foot by practise to prejudice the Creditors, and the sale made by the Commissioners.

*Edwards*, the Bankrupt, *Smith* and *Wood* preferred a Cross Bill against *Allen* and *Haberley* for the performance of the Agreement of ten Shillings in the pound, and to convey the Land to *Smith* and *Wood*, according to that agreement.

At the hearing of the Cause, upon *Al-Ob. 20. 16* *lens* Bill the Lord Chancellor finding it confessed, that of the Mortgage Mony there was but 30 *l.* unpaid, ordered that *Allen*, paying that thirty pound should have the same conveyed to him, and *Haberley* and Alderman *Boles* his Son, and the Statute of 2000 *l.* discharged, which was done accordingly, and a Decree made, that *Allen* and *Haberley* and their

1. One Creditor prefers his Bill, suggesting that the Incumbrances were fraudulent.

The other Creditors prefer a Cross Bill to perform the Agreement.

The Incumbrances decreed to be discharged, and the Land to be enjoyed by the two Creditors.

Apparent.

The Covenant proved in the Bargain and Sale.

Commissioners sell Land for 400 l. which was worth 2400 l. (because of Incumbrances which were not real) and the Vendee would enjoy it for that against the other Creditors.

their Heirs should enjoy the Land according to the sale of Commissioners, free from these Incumbrances and Charges of Alderman Boles his Statutes of 1500 l. was left to the Law; howbeit upon another motion, his Lordship staid the Liberate, after the Extent upon that Statute, and so it rested.

Allen having gotten the Incumbrance thus clear'd by the Court of Chancery, sought to hold the Lands for the 400 l. only, which was worth 2400 l. albeit he had Covenanted with the Commissioners in the Bargain and Sale, that if the Lands were sold for more than for 400 l. within three years, they should pay the overplus which it should be sold for above that 400 l. towards satisfaction of Creditors; and all the Incumbrances being cleared within the three years, as aforesaid, yet would he hold the Land for 400 l. and pay no more for it.

Hilary 7 Jac. Regis.

By Affidavit of Coland 13 April 1610. 6 Jac.

Vendee gets possession upon the first Decree.

Allen gets a Commission out of the Chancery to the Sheriffs of York there, to put him in possession of the Land, upon the first Decree in Chancery made for him; and Allen with the under Sheriff cast Edwards Children all out of Doors, and altho' the under Sheriff with Tears in his Eyes besought Allen to take compassion on them, yet he would not yield to any thing, but turned them out in

Frost

Frost and Snow, that they were inforced to scour themselves in a Mashfar; and when some of the Tenants of the Land would have taken them in and relieved ved them, *Allen* threatened to turn them out of their Tenements if they did so, and did turn out one of Tenants out of his House who entertained them but one Night.

Affidavit of weight.

Also *Allen* took divers Cattle and Goods that were *Edwards* Fathers Goods, and not the Bankrupts, as six Kine, &c. and the Old Man suing for them in the Kings Bench, *Alles* procured an Injunction out of the Chancery, and staid all the Suits so long as the Old Man lived, and who shortly after died.

*Edwards* and his Wife here at London, following the Suit to be relieved against *Allen* in July 8 *Jac.* died both together of the Plague, leaving seven poor Children behind, one sucking at Nurse in *Torkshire*.

The Lord Chancellor being informed of this extremity by Petition and Affidavit, gave direction that the Bill which *Edwards, Smith* and *Wood* preferred upon the Agreement of ten Shillings in the pound, should be revived on the behalf of the poor Children; and his Lordship assigned *Wood* their Gardian, to prosecute, and *Francis Moor* he assigned to be of their Council *in Forma Pauperis*.

A Petition 17  
Aug. 1610. 8  
*Jac.*  
Bill revived to  
perform the a-  
greement of  
10 s. in the  
pound,  
8 *Jac.* 3 Nov.  
assignment.

This

This Cause coming to hearing, and the Agreement appearing confessed by *Allens* Answer, and proved by the Certificate of the Commissioners and divers Witnesses, and the Covetous and unconscionable dealing of *Allen* appearing plainly by the Covenant which they took of *Allen*, that *Allen* should pay the overplus of the value of the Land above the 400*l.* if they should be sold for more, and the Unchristian and Uncharitable usage of *Allen* towards the poor Fatherless and Motherless Children of *Edwards* being all Infants, not able to help themselves considered,

Agreement Decreed.

The Lord Chancellor did Decree, that *Allen* and the rest should be satisfied with ten Shillings in the pound for their Debts, according to their Agreement, certified by the Commissioners, but no abatement of the 400*l.* paid for the Land, nor of the thirty pound paid for the Mortgage; and withall, that *Allen* should have allowance for Costs of Suit, reasonable; and for this purpose his Lordship made a reference to Sir *John Tindal* to cast up the Estate of the Bankrupt and the Debts, and to certify what overplus he found for relief of the poor Children.

Reference to a Master to cast up the Estate and Debts.

The Masters Certificate.

Sir *John Tindal* often heard the Cause, and the Allegations of *Allen*, and his Council, and in the end made a certificate of the Estate Real and Personal of the Bankrupt, and of the Debts, and made



made all allowances as by the Order was directed, and gave 200 Marks to *Allen* for Cost of Suit, and 100 Marks to *Hamberfley*, and 70*l.* to all the Creditors that sued out the Commission of Bankrupt; and for the residue did purpose in his Opinion to be fit that *Allen* should keep the Land, and pay the overplus of the value of the Land above the 400*l.* or depart with the Land to *Smith* and *Boles*, who would pay *Allen* and the other Creditors according to the Report, and yield the overplus to the Children, amounting to 600*l.* or thereabouts.

The Lord Chancellor, upon reading <sup>13 Nov. 18</sup> the Report, gave time to *Allen* to make <sup>14</sup> *Jac.* his election, whether he would keep the Land and pay the Mony, or depart with the Land and receive his Mony.

For that *Allen* made no Election, but insisted upon the advantage, to have the Land for the 400*l.* which was worth 2400*l.* and would yield nothing to the poor Children, nor to the Creditors, but dealt so mercilefely with them whose Parents lost both their lives in following their Suit to be relieved against *Allens* Unchristian and Barbarous Dealings.

The Lord Chancellor did make Decree, that *Allen* should receive the Mony mentioned in the Report, which is much more than in Equity is any way due unto him, and convey the Lands to *Boles* and *Smith*, two sufficient Men, who

Decree that the Trustee should receive his own Mony, and depart with the Estate.

who would be bound to pay the Creditors, and *Allen* also, and yet pay the overplus being 600*l.* or thereabouts, amongst the poor Children.

For not performing the Decree *Allen* is committed.

Trustee for not performing the Decree, is committed.

The pitiful Cries of the Father and the Mother dying, as is afore said, and of the poor Orphans, do call to God for relief, and moved the heart of the Chancellor to take compassion upon them, and to take such order as he hath done.

Indictment, for that the Chancery decreed Lands after Judgment at Law.

*Note*, Where *Allen* in the Bill of Indictment setteth forth, that he had two Judgments for his Debt in the Common Pleas, before the Suit in Chancery begun, which Judgments he supposeth to be called into Examination by this Suit and Decree in Chancery against him, contrary to the Laws and Statutes.

To this it is answered, *First*, That these Judgments were not alledged by *Allen* in his own Bill against *Edwards* in Chancery, nor in his Answer to *Edwards* Bill, nor in any Replication, Rejoinder, Deposition, Report or Motion in Chancery; neither were they so much as spoken of or informed to any Council or others, and there is no Order in Chancery concerning those Judgments.

*Secondly*, That these Judgments to be a year after *Edwards* became a Bankrupt, for he was Bankrupt *Primo Jacobi*, and

and the Judgments wore *Secundo Jacobi*.

*Note*, That these Judgments stand in force against the Bankrupts Body, or any Lands or Goods which he should afterwards obtain, and were not disposed by the Commissioners.

*Allen* himself sued out the Commission of Bankrupt with other Creditors, and was first named in the Petition to the Lord Chancellor for getting the Commission, and attended in person in execution of that Commission at all meetings, by which he himself did decline from the strength of his Judgments, and submitted himself to be ordered by the Commissioners for his Debt before any Suit in Chancery begun.

*Note*, Where *Allen* by his Bill of Indictment supposeth his Freehold to be drawn in question in the Chancery, contrary to the Statute in *Magna Charta*, it is to be answered, that albeit Freeholds have been always ordered in Chancery upon Equity, where the Common Law cannot help the Parties, yet in this particular Case it is to be observed, that *Allen* himself was first Plaintiff in the Chancery, and did draw in question the Freehold which then was in *Alderman Bales* his Son by a Mortgage forfeited, for which Freehold to be conveyed to himself, he obtained the Decree in Chancery, and had it conveyed accordingly upon

Freehold Lands  
ordered in  
Chancery upon  
Equity, where  
the Common  
Law cannot re-  
lieve the Par-  
ties.

upon matter of Equity ( viz. ) because there was but 30*l.* unpaid of the Mortgage Mony.

Therefore if the Chancery did well when it dealt with the Freehold for *Allen*; why ought not the Chancery upon a new Matter of Equity, make Decree against *Allen* to depart with the same Freehold again, when he would have Land worth 2400*l.* to the defrauding of Creditors and poor Orphans, and in abuse to the Commissioners of Bankrupts and Court of Chancery.

*Of Bills of Conformity.*

Because Petitions for Composition are mentioned in the Statutes, I shall here add some Orders made in Chancery about the same, and published in open Court, *Octob. 31. 1620.*

**T**HAT no Compulsory Order be granted to Creditors to conform themselves, and agree unto any Rate or Composition at the Suit and Petition of the Debtor or insolvent himself, but only at the Suit of the Creditors, in imitation and according to the Equity of the Statute of Bankrupts.

That

That where such Suits are exhibited in the behalf of the Creditors, it be not enough that the Creditors are named in the Bill or Petition; but that there shall be always affixed to the Bill or Petition the agreements of the Creditors under the Hands and Marks of so many as have agreed, with a recital of the Sums and Times of their particular Debts.

That to the end there may be a ground of Information unto the Court, what the Debts are in truth, which otherwise may be but in shew; there shall always be before any Order is granted, a Reference made to some of the Masters of the Court, or other Commissioners upon due Examination; to certify the Court what the Debts are in truth, and of what Nature, and upon what Security; before which Masters and Commissioners shall also be heard the Informations and Allegations of such Creditors as have not compounded.

That no release be given upon any Bill or Suits, except the Debts of the Creditors that have agreed, amount at least to full three parts in four, to be divided of the total of the Debts; and not in these Cases neither, but sparingly, by the Discretion of the Court, upon hearing what may be alledged on both sides.

O

That

That no Proceedings at Law, in Case of any such Suits be staied against any Sureties of the Insolvent, nor against the Lands or Goods of the Insolvent himself in case of Recognizances or Statutes, but only against the person of the Insolvent.

It was a Saying of the Lord Chancellor *Elsmere*, that against Usurers, Bankrupts, Perjured Persons, Couseners, &c. *Quaelibet presumptio crescit in probationem*; and that one Proof, with some presumptions, is sufficient to induce him to Decree against such.

CHAP. XVII.

*Of Scandalous Words relating to a Man's Trade.*

I Shall now add some Cases out of our Books, about Actions on the Case, for calling one Bankrupt, or words to such Effect, by which an honest Tradesman may know how, and when to punish a Malicious, Scandalous Calumniator, and one that thinks it a slight matter to stab the Reputation of his Neighbour.

This Action on the Case will lie, for saying of a Merchant, Mercer, Grocer, Shoemaker, Dyer, Weaver, Graser, Cornmaster or Baker in London, a Millener, or any other Tradesman that gets his Living by Buying and Selling, that he is a Bankrupt; *Noy* 158. *Hutton* 49. *Stiles* 75. 1 *Boulst.* 267. 4 *Rep.* 19. *Croke Eliz.* 168. 1 *Rob. Abr.* 61, *Long & Lane*, of a Tanner, *quare* 11 *Brownl.* 16.

But to say of a Tradesman, thou owest more than thou art worth, and art not able to pay thy Debts, it's not Actionable; *Stiles* 213. *Q.*

Thou art a Bankruptly Knave, or a Bankrupt Knave, is Actionable, 4 *Rep.* 19. *Mittons Case.* 2 *Bulst.* 210. *Dyer* 72.

O 2

*Croke*

*Croke Eliz.* 911. 1 *Bulst.* 110. *Hutton* 13, 14. *dubatur ibi.* *Vide Stiles* 420. *Croke Fac.* 345, 578.

He is a *Bankrupt Rogue*, *Actionable*, *Godb.* 152. *Croke Eliz.* 21. *Hutton* 52.

He is a *Bankrupt Scrub*, is *actionable*, *Stiles Rep.* 75.

He is a *Bankrupt Slave*, is *Actionable*, *Croke Fac.* 58. *Popham* 184. But he must be a *Tradesman*, *Croke Fac.* 424. *Loyd and Pearse.*

Thou art a *Bankrupt Knave*, is *Actionable.* *Aliter*, Had it been *Bankruptly Knave*, *Croke Fac.* 345. *Selbys Case. Q.*

To say of a Man he will be a *Bankrupt* within two days, is *Actionable*, *Dyer* 72. 4. *Rep.* 19.

I will prove that *J. S.* hath been a *Bankrupt*, and hath agreed with his *Creditors* for a *Noble* in the pound, and I will prove it, *Hill.* 3 *Fac. B. R. Edmonds Case.*

I will prove thee a *Bankrupt*, *Action lies.* So, I will prove thee a *Bankrupt* by such a time, 1 *Croke* 193.

He is a *Bankrupt* and fled beyond the Seas for *Mony*, *Action lies*, *Trin.* 9 *Fac. B. R. Trulocks Case.*

He is not worth a *Groat*, he is a *Hundred Pounds worse than nothing*, 1 *Croke* 193, 231. *Hutt. Rep.* 152. 2 *Bulst.* 267. *Croke Fac.* 578. *Act. Cases.* *Croke Car.* 265. *Goodears Case.*

He



He is a Bankrupt, and I will drive him out of the Country, Action lies.

*Who art thou? A Bankrupt? And wast a Bankrupt, Croke Eliz. 273.*

To say of a Merchant he is broken, Action lies, *H. 17 Jac. B. R. Johnsons Case.*

To say of one that doth Merchandize for Lead in any County, and get his Living by it, *he is a Bankrupt and Beggarly Gentleman*, Action lies, *1 Bulst. 41. Huttons Rep. 40.*

Words spoken of a Cornmaster or Baker in London, Thou art a broken Fellow, and hast cheated me of 200 l. Action lies, *Stiles 429.*

So for this said of a Millener in London, Thou art in a breaking and decayed Condition, and I will prove it; and if you question me, I will prove it to your disgrace, *Stiles 425.*

To say of a Merchant that isto have a Trial at *Guild-Hall*, he is broken, *Innuendo*, he is not able to pay for the Wares he bought, and I warrant you he dares not be at the Trial at *Guild-Hall*, *Croke Jac. 562.* Action lies.

To say of a Grocer, he is a Beggarly Fellow, and not able to pay his Debts, Action lies, *Croke Eliz. 339, 643.*

It is said no Action will lie for this, He is a base broken Rascal, and hath broke twice, and I will make him break the third time, *Noy 77. Bend. 170. Marshall*

and

and *Allen, Latb. p. 114. Hills Case*. To say he will break shortly, Action lies, by *Doderidg, &c.*

To say of a Merchant or Tradesman, Trust him not for he will be thy undoing, no Action lies, 1 *Croke* 171. Nor for this, I will sue out a Commission of Bankrupts against J. S. Nor for this, Thou art an Arrant Knave, for thou hast cozened all *Coventry*, 1 *Bulst.* 162, 163. Nor for this said of a Merchant, Doth he owe you Money? Get it quickly, and take heed how you trust him, *Croke Eliz. 541. Vaspicks Case*, 1 *Rolls Abr.* 61.

If one be a Merchants Apprentice, and he doth Merchandize for another man, and be called Bankrupt; or if one have been a Merchant, and hath given it over, and a man call him Bankrupt; in either of these Cases the Action will not lie, but 1 *Rolls Abr. contra*, 61. *Gray and Weston*; and yet if he have resumed his Trade again, and then be called so, Action lieth, *Noy* 33. 1 *Bulst.* 267. For he may trade again, *Gardner and Hopland*.

E. a Merchant brought Action against W. for these words, He would prove that Mr. E. had been a Bankrupt, and had agreed with his Creditors for a Noble in the Pound, it's Actionable, *H. 3. Jac. R. B. Rot. 85.*

Thou

*Thou art not worth a Groat, not Actionable, P. 15. Car. B. R.*

If a man saith to *A.* who is a *Dier*, *Thou art not worth a Groat*, no Action lies for these words; tho' it be averred that in *Exeter* where the words were spoken, they tantamount to thou art a Bankrupt, 15 *Car. B. R.* 1 *Rel. Abr.* 86. *Moon and Axe.*

If a man saith of a Grocer or other Tradesman, You are a base Beggerly Knave, and are not able to pay your Debts; and avers that according to the phrase and understanding of the place where this was spoken, these words are understood that he was a Bankrupt, Action on the Case lies, *P. 11 Car. B. R. Jackson and Lewis.*

Thou art a Cheating Merchant, is Actionable, if a Discourte was of his Trade, *Trin. 17 Car. Lambell and Hancock.*

To say of a Scrivener, he is a broken Runnaway, and dares not shew his Face, it's Actionable, *Mich. 13 Car. B. R. Best and Lois.*

He is a Broken Rascal, and hath broken twice already, and I will make him break the third time, Action lies not: To say he will break shortly, will bear an Action, but not to say I will make him break, *Latch p. 114. Hills Case.*

He is gone, and dare not shew himself for Debt, and he is a Bankrupt for ought I know, Action lies, *Stiles p. 130, 142. Jones and Jacob.*

O 4

A. is

*A.* is a Foreman in a Shoemakers Shop, and one saith of him, It is no matter who hath him, for I warrant whosoever hath him, he will cut him out of Doors, Action lies, 1 *Rolls Abr.* 60. *Ellis and Hunt.*

In an Action on the Case, if the Plaintiff declare that where he was a Servant to *J. S.* and as a Journeyman to him, sold divers Commodities for his Master truly, and that he gained his Living by his Service; and the Defendant having communication of his Sellings, said of the Plaintiff, thou hast cozened me of 5 *l.* in a piece of Stuff, and hast cozened me of 600 *l.* more; thou hast maintained thy self and others with my Mony, and thou didst take four or five pound out of the Box, Action lies upon this Declaration, 1 *Rolls Abr.* 60. *Phillips and Ellaker.*

In Action on the Case, if the Plaintiff declares he was a Merchant, &c. the Defendant intending to defame him in his Trade, having communication of his Trade, and of a Partnership between the Plaintiff and *J. S.* before had in a certain Ship, called *B.* spake these scandalous words of the Plaintiff, He is a Base Cheating Knave, and hath cheated *J. S.* (the said *J. S. innuendo*) and I will prove it; for he received of *C.* in Partnership 20 *l.* and gave an account unto *J. S.* *pred<sup>o</sup> J. S. innuendo*) but of 5 *l.* received of the said *C.* Action lies, for it disgraceth him

him in his Partnership, which is a part of his Trade as a Merchant, *Trin. 15 Car. B. R. Arundel and Massey.*

One said of a Tradesman, He is a broken Bankrupt, and a declined man, not able to pay his Debts, and therefore is run the Country; altho<sup>o</sup> he doth not alledge he used any certain Trade, yet Action lies if he used to Buy and Sell and live by it, 1 *Rolls Abr. 60. Boyer and Shale.*

One saith of Tradesman, He is a Base Beggarly Fellow, and if he had not had my help, he had not had a bit of Bread to put in his Head, and I have exactly cast up his Estate, he is not able to pay 2 s. 6 d. in the Pound to his Creditors; Action lies without averring any particular damage, *P. 1651. Rooks and Rooks.*

These words were spoken of a Merchant, He is a Beggarly Fellow and not worth a Groat, and not able to pay his Debts, and goes abroad with his Man double armed for fear of the Bailiffs; but it is not laid, that he continued Merchant at the time of the speaking; but the Court inclined that the words were Actionable, and the Profession shall be intended to continue in him till the contrary be shewn, *Siderfin, p. 424. Drake and Hill.*

The

The Plaintiff declares he was a Merchant by the space of twenty years, without saying (last past) and that 24 *Jac.* he goes beyond Sea, and 25 *Jac.* he returns here from *Hamborough*, and the Defendant said of him, He came from *Hamborough* a Broken Merchant; the words were Actionable, and his Profession shall be intended to continue. *Locroft and Durnfords Case*, cited in *Drake and Hills Case*.

To say of one, He is a Cheat, is not Actionable; but if the Plaintiff was a Merchant, and the Defendant saith of him, He is a Cheating Merchant, it is Actionable, cited in *Siderfin*, 433. in *Kirle and Osgoods Case*.

*Per Twisden*, cited in *Siderfin*, p. 434. *Lord Peterboroughs Case*, it was adjudged 5 *Car.* that to say, *I do not know but that J. S. is a Bankrupt*, is Actionable.

The Court conceived these words (Bankruptly Knave) to be Actionable, 1 *Keb.* 439. *Booth and Leach*.

Action on the Case was brought for calling one Bankrupt, and upon General Issue, found *pro Querente*, and 150*l.* Damages; the Court mitigated it to 50*l.* but after upon great Advice, they Revoke this, and resolved to leave such Matters of Fact to the finding of the Jury, who know the quality of the Persons and their Estates, and Damages sustained by the Disgrace. *Aliter*, In an Action which

Damages.

which is grounded upon a Cause that may appear to the view of the Court, *Palmer, p. 314. Hawkins and Seier.*

If in Trespass, the Defendant justifies <sup>plea</sup>, that the Plaintiff was a Bankrupt, whereby he had a Commission upon the Statute, and those goods were delivered unto him, whereas the Plaintiff was not any Bankrupt, nor any Commission issued, yet the Plaintiff for the words contained in the Plea, shall not maintain any Action, *Croke Jac. 432. in Weston and Dabniets Case.*

Plaintiff Declares, Whereas 1 April 17 Jac. and for divers years before he was a Merchant, that the Defendant the said 1 April 17 Jac. spake these words of the Plaintiff, He is a Bankrupt Slave; the Defendant justifies, because the Defendant <sup>Justification.</sup> 1 April 15 Jac. became Bankrupt, and therefore he spake these words; Plaintiff demurred, and adjudged *pro Querente*: the Bar was insufficient, because he doth not alledge that he continued still a Bankrupt, and without Averment, it shall not be intended that he continued so; for it may be that he afterward recovered himself, and became a Good Merchant and no Bankrupt, *Croke Jac. 578. Upsher and Betts.* By this Case understand the Maxim, Once a Bankrupt, &c.

Action was brought for calling the Plaintiff Bankrupt, and he Declares by <sup>Declaration.</sup> the Name of *J. E. Mercator*, and that he

he by his Good Name had the Good Will of his Neighbours, *ac etiam Emendo & Vendendo* he acquired *diversa Lucra*; Verdict *pro Quer* and Judgment was arrested, because it doth not appear by the Declaration, that he got his Living by Buying and Selling, *Siderfin*, p. 299. *Emersons Case*.

The difference was well taken in *Dottings Case* Noy 33. If a Merchant relinquish his Trade to live in the Country, in the nature of a Gentleman or a Farmer; to call him Bankrupt is not Actionable; but if afterwards he exerciseth that again, and then is called Bankrupt, an Action then lies.

Declaration.

It is not needful in the Declaration to say he was a Merchant, but to say he was Tradesman is sufficient, *Noy* 158. *Courtney and Tompson*.

Words spoken of a Drover, that he is a Bankrupt, is Actionable, for a Drover is within the Statute of Bankrupts; but because it was not averred, that he was a Drover at the time of the speaking the words, it was held to be ill in *Collins and Malins Case*, *Jones Rep.* 304 2 *Keb.* 274. *Amerfam and Fairfax*.

Declaration is, That he got his Living by Buying and Selling, albeit no certain Trade is mentioned, yet the Action for calling him Bankrupt, lay, *Bowers Case* cited, 2 *Keb.* 274. *Amerfam and Fairfax*.



If one faith of a Man ( who by his Trade may become a Bankrupt within the Statutes ) that he is a Bankrupt, an Action lies.

Thou art a Bankrupt Rogue, spoken of a Woollwinder, Action lies not, *M. 2 Car. B. R. Barker and Ringrose.*

By Mr. Justice *Wild*, in *Amson and Blofeilds Case*; *Carters Rep. p. 214.* To say of a Merchant, *He hath eaten a Spider*; with an Averment what the meaning is, as much as to say he is ready to burst, is Actionable. *Q.*

Here I shall add some Special Precedents of Actions and Suits at Common Law and in Chancery, by which the Industrious Student may Form and Model his Draughts in Parallel Cases.

Plea

Plea to an *Indebitatus Assumpsit*  
that it was Assigned by the Commis-  
sioners of Bankrupts.

Protestation.

**A**ctio non, quia dicit prestando  
quod ipse non assumpsit super  
se modo & forma prout p<sup>r</sup>o (Cur)  
verlus eum querat? protestando etiam  
quod idem D. non fuit indebitat p<sup>r</sup>ae  
querenti in aliqua denariozum summa  
ultra decem & octo Libras prout p<sup>r</sup>  
Billam p<sup>r</sup>o superius supponit? p<sup>r</sup> plito  
idem D. dicit q<sup>uod</sup> p<sup>r</sup>o Id existet sub-  
dit<sup>is</sup> natus hujus Regni Anglie p<sup>r</sup>o de-  
verlos Annos p<sup>r</sup>o ante festum Sel-  
Michis Recti Anno Regni, Et. 14  
fuit constant<sup>er</sup> pandoratus at p<sup>r</sup> totum  
idem temp<sup>us</sup> victum & facultatem su-  
am vivendi quesivit Et idem Jac  
sic negocians & victum suum querens  
infra tempus illud apud D. p<sup>r</sup>o in Comd  
It. p<sup>r</sup>o devenit indebitat? quibusdam  
J. V. & J. B. & alijs Creditorib<sup>us</sup> suis  
existen<sup>ter</sup> subditis natis hujus Regni  
Anglie in diversis denariozum sumis  
attingen<sup>ter</sup> in toto ad sumam 200 l. lega-  
lis, Et. & amplius q<sup>uod</sup> idem Jac sic  
indebitat? existen<sup>ter</sup> infra temp<sup>us</sup> p<sup>r</sup>o selt  
1 Die Maij Anno, Et. xiiij incepit cu-  
stodire Domum suam Mansional apud  
D. p<sup>r</sup>o & Latitare p<sup>r</sup> timore Arresta-  
tionis p<sup>r</sup>o debis p<sup>r</sup> ipsum Jac p<sup>r</sup>ae J. D.  
&

& alijs Creditorib<sup>9</sup> suis debet. Et si. Act of Bank-  
rupts denial.  
 milie adtunc debet mandatum scribend<sup>9</sup>  
 suis negare Creditorib<sup>9</sup> suis ipsum p<sup>o</sup>  
 J. esse in ead<sup>9</sup> Domo sua quando fuit  
 incus in ead<sup>9</sup> ad perastinans debitor<sup>9</sup>  
 suos de veris & iustis Debitis suis eis  
 p<sup>o</sup> J. adtunc debet & insolue. Ac ra-  
 tione pmissio<sup>9</sup> idem J. p<sup>o</sup> 1 die Maij  
 Anno, Ec. xij supradice apud A. p<sup>o</sup>  
 in poth & warda p<sup>o</sup> debitis suis p<sup>o</sup>dis  
 tunc minime solue existend<sup>9</sup> manifeste  
 devenit & adhuc existit decocto<sup>9</sup>. Ip-  
 soq<sup>9</sup> J. sic decocto<sup>9</sup> existend<sup>9</sup> postea scilicet  
 18 die Octob<sup>9</sup> Anno Regni, Ec. xij su-  
 pradice apud Westm<sup>9</sup> in Com<sup>9</sup> Westm<sup>9</sup>  
 & ad Petitionem p<sup>o</sup>ditoy J. H. & J. Petition.  
 D. C. Confr<sup>9</sup> C. cum & adhuc Dom<sup>9</sup>  
 Cancellario Anglie face & exhibe p<sup>o</sup>  
 remedijs suis verlus p<sup>o</sup>lar J. tunc ex-  
 istend<sup>9</sup> decocto<sup>9</sup> in hac parte habens ijs-  
 dem J. J. & ceteris Creditorib<sup>9</sup> p<sup>o</sup>  
 J. de debis suis p<sup>o</sup> tunc minime sa-  
 tisface quedam Commisio dicti Dom<sup>9</sup> Commission.  
 Regis super Statute contra Decocto-  
 res edic<sup>9</sup> & p<sup>o</sup>biis sub Magno Sigilla  
 dice Dom<sup>9</sup> Regis sigillae & hic in Cu-  
 rta plac<sup>9</sup> gerend<sup>9</sup> dac apud Westm<sup>9</sup> p<sup>o</sup>  
 eisdem die & Anno quibusdam J. H.  
 A. A. M. A. B. W. B. & P. B. di-  
 cere fuit p<sup>o</sup> quam quidem Commissionem  
 dict<sup>9</sup> Dominus Rex tunc dedit plenam  
 potestatem & auctoritatem p<sup>o</sup> Com-  
 missionari quatuor vel trib<sup>9</sup> eorum quo-  
 rum idem Dominus Rex p<sup>o</sup> J. H.  
vel

del R. A. unum esse voluit iuxta se-  
 palia Statuta de Decretis in hu-  
 jusmodi Casu edic & provis in dicta  
 Commissione mentionat non solum con-  
 cernend, &c. put supra. (omittit) tan-  
 tum hec verba, & alterius eorum) usq  
 put p eandem Commissionem plenius  
 apparet Virtute cujus quidem Com-  
 missionis. Et vigore Statutorum pbi-  
 corum pd, J. &c. tres Commissionarij de  
 Commissionarij pd accepe super se onere  
 execution Commissionis pd super ma-  
 turam deliberationem inde cape pre-  
 medio Creditorum pd postea scilicet 10 die  
 Nov. Anno Regni, &c. xvj supradict  
 apud London pd in poch & warda pd  
 invenerunt pd Jac ante emanacionem  
 Commissionis pd devenisse & fuisse deco-  
 ratem ad omnia intentiones & pposi-  
 ta infra pvision & intencion Statu-  
 torum pdice ac diversa deba & denario-  
 rum summas fore tunc debita & pti-  
 nend Statuti pd Jacobi a sepalib' p-  
 sonis. Et postea scilicet eisdem die & An-  
 no apud London pd in poch pd iidem  
 tres Commissionarij p quandam In-  
 denturam suam assignationis inter ip-  
 sos J. &c. ex una parte & pd J. P. &  
 J. G. ex altera pte face cujus alte-  
 ram ptem Sigillis pd J. P. &c. sigil-  
 lac idem D. hic in Curia pfect cu-  
 dae est iisdem die & Anno quantum in  
 ipsis fuit & Legitime potuerunt assig-  
 naverunt & transposuerunt pd J. P. &

Commissioners  
 find him a  
 Bankrupt.

Assignment of  
 Debts.

& J. B. omnia & singula separalia debita & denari summas particulariter & expressis mentionat in quadam Scheda sive Inventorio indentat eid Indentur annex' & onerabil debite p psonas in dicta Scheda nominat vel aliquam eorum tunc debite p dicto J. habendi & tenendi (Anglice sue forth) recuperandi recipiendi possidendi & gaudendi omnia & singula debita & denario summas in dicta Scheda expressa. Ac omnia alia debita p eand Indenturam assignat & quamlibet partem inde ipsis dictis J. B. & J. D. Executorib' Administratorib' & Assignat suis & cuilibet eorum ut eorum proprium statum impetuum In qua quidem Scheda inter alia continetur quod decem & Octo Libre fuerit debite & pertinet status p Jac p ipsum H. prout p eandem Indenturam & Schedulam p hic in Curia plac pleni' apparet Quorum ptertu idem H. onerabilis devenit & adhuc existit ad solvendi plac J. B. & J. D. omnia debita & denario summas p ipsum ac debite Statui p dicti Jacobi. Et hoc, Et. unde, Et.

P

Plea

Plea to Bond for performance of Covenants ( or Articles ) for payment of Rent, that the Plaintiff was a Bankrupt, and that the Defendant paid the Money to the Assignees of the Commissioners of Bankrupts.

**Q**uibus lecte & auditis idem Def<sup>r</sup> dicit quod p<sup>r</sup> Queri Actionem suam p<sup>r</sup> inde verius eum habere seu manuteneri non debet quia dicit quod Articuli p<sup>r</sup>ded in Conditione p<sup>r</sup> ( reciting the Articles ) p<sup>r</sup>out p<sup>r</sup> Articulos p<sup>r</sup>ditos inter alia plenus liquet & apparet Et quoad p<sup>r</sup> xxij l. in Articulis p<sup>r</sup> mentionat fore solvend<sup>r</sup> p<sup>r</sup> ipsum D. p<sup>r</sup>fac R. ad finem p<sup>r</sup>ded termin<sup>r</sup> sex Annor<sup>r</sup>. Idem D. ulterius dicit quod post confecti<sup>r</sup> scrip<sup>r</sup> obligatorij p<sup>r</sup> & Articulo<sup>r</sup> p<sup>r</sup> & ante p<sup>r</sup> finem & expirationem p<sup>r</sup> termin<sup>r</sup> sex Annorum scilicet decimo septimo die Julij Anno Regni p<sup>r</sup> nuper Dom<sup>r</sup> Regis sexto decimo apud Civitat<sup>r</sup> Ebor<sup>r</sup> p<sup>r</sup> p<sup>r</sup> R. indebitatus fuisset cuidam M. B. ac diversis alijs p<sup>r</sup>sonis Creditorib<sup>r</sup> p<sup>r</sup> R. ( existens sub die n<sup>r</sup>a infra hoc Regnum Anglie ) in diversis sepealib<sup>r</sup> denariorum summis in toto se Attingend<sup>r</sup> ad mille Libras Legalis Monete Anglie ipso<sup>r</sup> S. sic indebitae existend<sup>r</sup> idem R. postea scilicet 17 die Julij Anno Regni

Regni dice Dom Regis nunc 16 sup-  
dicto iisdem Creditorib<sup>9</sup> de debitis su-  
is minime satisfacere existend apud Ci-  
vitae Eron p<sup>o</sup> pro debito Arrestat<sup>o</sup>  
fuit Et super Arrestationem p<sup>o</sup> ad  
pisonam dicti nuper Regis apud Ci-  
vitae Eron p<sup>o</sup> ductus fuisset Et ibi-  
dem in Pisona p<sup>o</sup> spatium duorum  
mensium tunc p<sup>o</sup>or<sup>o</sup> sequend & amplius  
remansit ad intentionem defraudand  
Creditores suos p<sup>o</sup> de debitis suis p<sup>o</sup>  
p<sup>o</sup> ipsum R. sic ut p<sup>o</sup>fertur debie Et su-  
perinde postea selt 1 die Octob Anno 16  
supradice apud Civitae Eron p<sup>o</sup> J-  
dem R. devenit decocto<sup>o</sup> (Anglice be-  
came a Bankrupt) infra Statue con-  
cernend decocto<sup>o</sup>es nuper edic & p<sup>o</sup>vis  
Quodq<sup>o</sup> p<sup>o</sup> R. p<sup>o</sup>dicto tempore quo ut  
p<sup>o</sup>fertur devenit decocto<sup>o</sup> fuisset subdit<sup>o</sup>  
p<sup>o</sup> nuper Dom Regis natus infra hoc  
Regnum Anglie videlt apud Civitae  
Eron p<sup>o</sup> Et adtunc & ibis & p<sup>o</sup> mul-  
tos Annos tunc ulterius elaplos que-  
rebat victum suum p<sup>o</sup> viam Emendi  
& Merchandizandi Et ulter<sup>o</sup> idem R.  
dicit quod superinde postea selt 17 die  
febr Anno 16 supradice apud Westm  
in Com Midd ad Petitionem p<sup>o</sup> ad  
& aliorum Creditorum p<sup>o</sup> R. E. D.  
Hic adtunc Dom Custodi Magni Si-  
gill Anglie ante tunc exhibie & face  
p<sup>o</sup> remedijs suis versus p<sup>o</sup> R. tunc  
existend decocto<sup>o</sup>em (Anglice became a  
Bankrupt) in hac parte habend p<sup>o</sup>fac

Act of Bank-  
ruptcy remain-  
ing two Months  
in Prison.

Commission.

Ad. & ceteris Creditorib<sup>9</sup> p<sup>o</sup> R. de de-  
bitis suis p<sup>o</sup> tum minime solue sive  
satisfacere existend quedam Commissio p<sup>o</sup>  
nuper Dom<sup>o</sup> Regis super Statue con-  
tra decoctores (Anglice Bankrupts) Edie  
& p<sup>o</sup>vis sub Magno Sigillo diai nuper  
Domini Regis Anglie sigillae geren-  
dae apud Westm<sup>o</sup> p<sup>o</sup> p<sup>o</sup> 17 die Febr<sup>o</sup>  
Anno 16 supradice dilectis & fidelib<sup>9</sup>  
dice nuper Dom<sup>o</sup> Regis J. R. R. S.  
&c. direce fuit p quam quidem Com-  
missionem dia<sup>o</sup> nuper Dom<sup>o</sup> Rex per-  
pendens debitam executionem tam  
Statue tangend ordines pro decoctozib<sup>9</sup>  
(Anglice Bankrupts) in Parlamento  
incepe tene apud Westm<sup>o</sup> p<sup>o</sup> sedo die  
Aprilis Anno Regni pcharissime So-  
rozis p<sup>o</sup>ced nuper Dom<sup>o</sup> Regis Dnd  
Elizabethhe nuper Regine Anglie 13  
edie & p<sup>o</sup>vis quam etiam Statue  
edie in Parlamento incepe & tene apud  
Westm<sup>o</sup> p<sup>o</sup> 19 die Martij Anno Reg-  
ni Dom<sup>o</sup> Jacobi nuper Regis Anglie  
primo Scotie 37 Intitulat Claus p  
meliori relebamine Creditorum versus  
tales qui deven<sup>o</sup> decoctores dedit ple-  
nam potestatem & auctoritatem iisdem  
quinque Commissionari quatuor vel trib<sup>9</sup>  
eor<sup>4</sup> quorum p<sup>o</sup> J. R. vel p<sup>o</sup> W. R.  
unus esse voluit juxta eadem Statuta  
& utrumq<sup>ue</sup> eorum non solum concernend  
p<sup>o</sup> decoctorem corpus ejus terras li-  
beras (Anglice Freehold) & custumai  
(Anglice Copyhold) bona debita & alia  
quecunq<sup>ue</sup>



quecunq; sed etiam concernend omnes  
alias psonas que p concealamentum  
clameum vel alteri offenderent tangeñd  
pmissa vel aliquam partem inde contra  
intentionem & ppositie pdictoꝝ Statuto-  
rum vel alteri⁹ eozum ad faciend⁹ &  
exequend⁹ omnes & quassibet rem &  
res quascunq; tam erga & p satisfacti-  
one & solucone pdictozum Creditoꝝum  
quam erga & p omnib⁹ alijs inten-  
tionib⁹ & ppositis secundum ordina-  
tionem & provisionem eozundem Sta-  
tutoꝝum vel alterius eozum p quam  
quidem Commissionem dictus nuper  
Dominus Rex voluit & dedit in man-  
datis pdictis Commissionari quatuor  
vel trib⁹ eozum quozum pd⁹ J. N. &  
W. R. unum esse voluit ad pcedend⁹  
ad executionem & accomplemēne pdice  
Commissionis secundum veram inten-  
tionem & ppositie eozundem Statuto-  
rum & alterius eoz⁹ cum omni dili-  
gentia & effectu secundum specialem fi-  
duciam dicti nuper Dom⁹ Regis in  
ijsdem Commissionari repositie prout p  
eandem Commissionem plenius appa-  
ret Virtute cuius quidem Commissi-  
onis ac vigoze Statutoꝝum pdictoꝝ  
pd⁹ J. N. &c. tres Commissionarij pd⁹  
postea scilicet 9 die Nov. Anno Regni nu-  
per Regis Caroli 17 apud Civitae  
Erox pd⁹ in debita juris forma ad-  
judicaverunt & declaraverunt ipsum  
R. esse decoctoꝝem infra Statue pd⁹

Quorum.

Commissioners  
adjudge him a  
Bankrupt.

Assign the  
Debts.

*The Law*

Et adtunc & ibidem concesserunt assignaverunt & posuerunt p̄dictam summam x l. in Articulis p̄dictis superius mentionae fore solvend' p̄lac R. p̄ p̄d' H. inter alia p̄lac M. tunc un' Creditorum p̄d' R. existend' scdm̄ formam Statue p̄d' Et idem H. ulterius dicit quod ipse idem H. omnes alias conventiones in Articulis p̄dictis mentionae ex parte ipsius H. p̄formand' & custodiend' a tempore consecrationis scripti obligatorij & Articulorum p̄dictorum hucusq; bene & fidelic' p̄implebit & custodivit scdm̄ formam & effectum scripti obligatorij Et Articulorum p̄dictorum Et hoc, &c. unde, &c. Cum hoc qd' idem H. verificari vult quod p̄d. P. III. adhuc superstes & in plena vita existit videt' apud Com' Exon p̄d', &c.

Averment.

Scire

Scire Fac' pro Creditoribus sur Stat' de  
Bankrupts sur Judgment recuper' per  
le Bankrupt envers Executrix.

**C**arolus, &c. Die Hanc salutem  
Cum C. S. alias scilt Termino  
Sci Mich' Auo Reg' nostri sedo coram  
R. H. Mil f. H. Mil. C. C. Mil & H.  
H. Mil tunc Iusticiarijs nostris de  
Banco apud Westm' p' Iudiciu' ejus-  
dem Curie recuperata versus A. B.  
Vid' p' nomen A. B. de C. in Com' p'p'  
Executricis Testamenti R. B. Mil Judgment.  
nuper, &c. tam quoddam debitum  
400 l. quam 50 s. que eid' C. S. in ead'  
Curia nostra adjudicat' fue' pro dam-  
nis suis que huc occasione detentionis  
debiti illius si ead' A. tanta Bona &  
Catalla que fue' p'p' A. tempore mortis  
sue in Manib' suis Administrans ha-  
bisset & si non huisset tunc damna  
p'dea de Bonis & Catallis p'p' A. pro-  
prijs lebant unde convicte fuit prout p'  
reco' & process' inde in ead' Curia no-  
stra reside' liquet manifeste Cumq'  
superinde postea scilt Termino Sci M.  
Anno Regni nostri quarto in p'dice  
Curia nostra de Banco p' tunc Iustici-  
arios nostros ibid' conc' fuisse quod p'  
C. S. heret executionem versus p'fat' Executrix.  
A. de debo & dam' p'dice de Bonis &  
Catallis p'p' in forma p'dice lebant p'  
P 4 ipsius

Scire

Fi. Fa.

Retorn'.

ipſius A. defale prout p record Et p-  
 reſſ in ead Curia noſtra reſiden ſiliter  
 liquet manifeſte Cumq; etiam p̄ C.  
 S. p citioze executione judicij p̄ hend  
 in p̄dice Termino Sed M. Anno quar-  
 to ſupradice ſcilt 9 die Octob iſto eod  
 Termino pſecue fuiſſ & impetraſſet  
 extra p̄ Curiam noſtram de B. p̄  
 apud Weſtm p̄ quoddam h̄ebe no-  
 ſtrum de Fi. fa. tunc Dic R. direce p  
 quodquidem h̄e nos p̄cepimus quod  
 ipſe de Bonis & Catallis que fueſ p̄  
 A. B. &c. in manib<sup>9</sup> p̄ſar A. B. &c.  
 fieri faceret tam p̄ debitum 400 l. (ut  
 in Fi. Fa. uſq; unde convict<sup>9</sup> fuit) Ad  
 quem diem coram eiſdem tunc Juſti-  
 ciarijs apud Weſtm venit p̄ C. S. p  
 J. H. tunc Attornae ſuum Et tunc  
 Dic (videlt) C. C. Viſit tunc man<sup>9</sup>  
 Juſticiarijs noſtris apud Weſtm p̄  
 q̄ p̄ A. nulla huit Bona ſeu Catalla  
 in Balliva ſua que fueſ p̄ A. tempo-  
 re mortis ſue in manibus ſuis Admi-  
 niſtr unde debitum & damna p̄dca  
 ſibe aliquam inde p̄cell ullo modo fieri  
 facere potuit Et q̄ p̄ A. nulla huit  
 Bona ſeu Catalla ſua pp̄ia in Ballia  
 ſua unde damna p̄ ſeu aliquam inde  
 p̄cell fieri facere potuit Super quo  
 Ceſſatum fuit in ead Curia noſtra ex  
 pte ipſius C. S. quod p̄ A. ſatis ha-  
 buit de Bonis & Catallis que fueſ p̄  
 A. tempore mortis ſue in manib<sup>9</sup> ipſi<sup>9</sup>  
 A. Adminiſtrand infra libertae quinq  
 po<sup>9</sup>

portuum unde debitum & damna p̄deā  
 fieri & lebare potuit super quo p̄d. C.  
 S. p̄dcō Termino Sed M. scilicet 6 die  
 N. Anno quarto supradice p̄secue fuit  
 extra p̄deam Curiam nostram de Ban-  
 co p̄d. quoddam h̄re nostrum de Testat.  
 Fi. Fa. tunc Constabulario (ut supra  
 usq; direct<sup>9</sup>) p̄ quod quidem h̄rebe nos  
 p̄fāe Constabulario, &c. p̄cepim<sup>9</sup> quod  
 ipse de Bonis & Catallis que fuer<sup>t</sup>  
 p̄fāe R. B. nuper dice, &c. in manib<sup>9</sup>  
 p̄fāe R. p̄ nomen, &c. Executricis Te-  
 stamenti p̄fāe R. existend infra liberta-  
 tes quinq; portuum fieri facerent tam  
 p̄d. debitum 400 l. (ut in communi Fi.  
 Fa. usq; unde convict<sup>9</sup> fuit) Quod qui-  
 dem h̄rebe postea & ante retorn<sup>9</sup> h̄revis  
 illius scilicet 10 die p̄d. Mensis Novem-  
 bris Anno Regni nostri quarto p̄no-  
 bili Theophilo Comiti Suff. tunc &  
 adhuc Constabulario p̄d. Castri Dover  
 ac custod quinq; portuum p̄d. & mem-  
 b̄orum eorundem in forma juris exe-  
 quendū deliberat fuisse Ad quem diem  
 scilicet a die Sed Martini, &c. coram ijs-  
 dem tunc Iusticiarijs nostris apud  
 Westm p̄d. venit p̄d. C. S. p̄ Attornae  
 suum p̄deum Idemq; C. Comes S.  
 tunc Iusticiarijs nostris p̄dice apud  
 Westm p̄d. ad diem ill<sup>9</sup> mans quod p̄d.  
 N. B. nulla fuit Bona seu Catalla  
 que fuer<sup>t</sup> p̄d. R. B. tempore mortis (ut  
 supra usq; facere potuit) quodq; ead<sup>9</sup> N.  
 ante aduentum h̄revis illius sibi direce  
 quedam

Testatum Fi.  
 Fa. al<sup>9</sup> cinq;  
 Port<sup>9</sup>

Retorn del  
 Constable de  
 Dover Castle.

Devastavit.

quedam Bona & Catalla que fuer' p<sup>r</sup> A. tempore mortis sue ad valentiam 100 l. devastasset Et in usum summ' proprium convertisset Et ulterius Justiciarijs nostris certificat quod p<sup>r</sup> A. nulla fuit Bona seu Catalla sua propria unde damna p<sup>r</sup> seu aliquam inde p<sup>r</sup>cell fieri facere potuit prout p<sup>r</sup> breve & retorn' inde in dicta Curia nostra de Banco p<sup>r</sup> residen' liquet manifeste Cumq<sup>ue</sup> p<sup>r</sup> T. S. iij die Maij Anno Regni nostri sexto indebitae fuisset cuidam W. N. Gen' in summa 88 l. & 7 s. solvend' eid' W. cum inde requisitus fuisset Ac etiam cum p<sup>r</sup> T. S. adtunc indebitae fuisset cuidam W. N. Gen' in summa 34 l. solvend' eid' W. N. cum inde requisitus fuisset Ac etiam cum p<sup>r</sup> T. S. p<sup>r</sup> iij die Maij Anno Regni nostri sexto supradice indebitae fuisset cuidam A. S. in summa 45 l. solvend' eid' A. S. sicut cum inde requisit' fuisset eidem W. N. W. & A. S. tunc existent' subditis natis Regni nostri Anglie Ac etiam cum p<sup>r</sup> T. S. adtunc indebitae fuisset diversis alijs p<sup>r</sup>sonis Creditorib' ipsius T. sicut existent' subditis natis Regni nostri Anglie in diversis alijs denariorum summis in toto se attingend' and 5013 l. & 12 s. Regalis Monete Anglie Ipsosq<sup>ue</sup> T. S. sic indebitae existent' ac p<sup>r</sup>dice 100 l. p<sup>r</sup> valore Bonorum & Catallorum que fuer'

fueri p̄lac R. B. tempore mortis sue p  
 p̄d' A. ut p̄fertur deballat dicto C. S.  
 minime solue sibe lebat existēd Idem  
 C. S. postea scit ij die Junij Anno  
 Regni nostri sexto supradicto apud  
 Maidstone p̄lac W. P. W. M. & R. S.  
 ac ceteris Creditorib' p̄dcd C. S. de  
 debitis suis p̄d' minime solue existēd  
 incepisset custodire Domum suam ibid' Act del Bank-  
 rupty.  
 existēd ad intentionem defraudare Cre-  
 ditorēs suos p̄dictos de debitis suis  
 eis ut p̄fertur p p̄d' C. S. debis Et  
 superinde eod' ij die Junij Anno sexto  
 supradice apud M. p̄d' manifeste debe-  
 nit Decotoz (Anglice a Bankrupt)  
 Qui quidem C. S. p̄dcō tempore quo  
 ipse devenit Decotoz fuit & adhuc est  
 subdit' natus hujus Regni A. apud  
 M. p̄d' & adtunc & p nonnullos An-  
 nos ante tunc apud M. p̄d' usus fuit  
 Arte seu Misterio Baffiatoris & que-  
 rebat facultatem suam Vivendi p vi-  
 am Emendi & Vendendi Ac cum po-  
 stea scit xix die Aug Anno Regni no-  
 stri septimo apud M. p̄d' ad Petitio- Petitio.  
 nem p̄dictoꝝ M. M. M. P. & R. S.  
 & alioꝝ Creditoꝝ p̄d' C. S. Thome  
 Dnō Cobentry Dnō Custod' Magni  
 Sigilli Anglie exhibie & face pro re-  
 medijs suis versus p̄lac J. S. tunc  
 existēd Decotozem in ea pte hend' eis-  
 dem W. P. W. P. & R. S. tunc mini-  
 me solue aut satisfacē existēd quedam  
 Commissio nostra super Statue contra Commissa.  
 De.

Decretores edic & provis sub Magno  
 Sigillo nostro Anglie sigillae in Cu-  
 ria nostra pd' coram pfae Justiciarijs  
 nostris apud Westm de B. pd' plac-  
 gerend dae apud E. in Com pd' Widd'  
 pd' xix die Aug Anno septimo supra-  
 dice quibusdam E. D. Mil P. P.  
 Armig T. B. Arm W. B. Gen & A. P.  
 Gen spial Commissionar nostris & de-  
 dimus plenam potestatem & authori-  
 tate eisdem Commissionarijs quatuor  
 vel trib' eorum quorum pd' P. P. aut  
 pd' T. B. unum esse volumus juxta  
 sepe rat Statue de Decretorib' in hu-  
 jusmodi casu edic & pvis in dicta  
 Commissione mentionae & quodlibet  
 vel ullum eorū non solum concerned  
 corpus ipsius T. B. Decretoris Ter-  
 ras Tenementa libera & custumaria  
 Bona Debita & alias Res quascunq;  
 verum etiam concerned omnes alias  
 psonas quascunq; que p concealamenta  
 vel aliter offenderent tanged pda  
 pmissa vel aliquam ptem inde contra  
 veram intentionem & ppositie pdictorū  
 Statutorū & eorū cujuscunq; vel ali-  
 cujus eorum ad faciend' & erigend'  
 omnes & quoscunq; rcm & res qual-  
 cunq; tam erga & p solucione & sa-  
 tisfactione pdictorū Creditorum quam  
 erga & pro omnibus alijs intenti-  
 onib' & ppositis scdm pprovisionem &  
 ordinationem eorundem Statutorum p  
 quam quidem Commission nos volu-  
 mus



mus & dedimus in mandatis qd' pdice Quorum.  
 Commissionarij vel quatuor vel tres  
 eorū quorum pd' P. P. aut pd' T. B.  
 unum esse volumus ad pcedend' ad ex-  
 ecutionem & perimpletionē Commis-  
 sionis pd' cum omni diligentia & effectu  
 sedm fiduciam nostram in eis reposie-  
 put p eandem Commissionem plenius  
 liquet & apparet Virtute cuius qui-  
 dem Commissionis ac vigore Statu-  
 torum pdictorū pdice P. P. T. B. W.  
 H. & A. P. juxta Officia sua obligat  
 cum omni diligentia ad optimam Sci-  
 entiam Artem & Industriam eorum  
 Commissionē pd' exequi pformare &  
 perimplere diversis sepeal temporib'  
 in ead' pcedebant ac Testes ead' tan-  
 gend' diligens & intente examinaver' ac  
 p eadem examinationes iij die M.  
 Anno Regni nostri septimo apud M.  
 pd' invenit pd' T. S. fore Decoretorem  
 infra pposuē & intentionem Statue pd'  
 & sic fore & devenire ratione evitatio-  
 nis & absentionis ipsius T. S. ab Ar-  
 restē Creditorum suorum & custoditio-  
 nis Domus ipsius T. ob metu Ar-  
 restationis ad lecta diversorum Credi-  
 torum suorum p veris & justis debitis  
 p ipsum debet Ac etiam pro eo qd'  
 pdice T. S. occulte & secrete a Domo Absenting  
 sua Mhantionali decessit p secreta fuga-  
 tionem in ptes ultra Mare & absen-  
 tationem sui ipsius extra hoc Regnum  
 & debitis ipsius T. S. p ipsum tunc  
 &

verment.

Et p<sup>r</sup>o iij die M. Anno septimo supradice  
 dibie Ipsi p<sup>r</sup>o C. B. W. H. & A. P.  
 virtute Statute & Commission p<sup>r</sup>o de &  
 p<sup>r</sup>o Causis supradictis p<sup>r</sup>o iij Die M.  
 Anno septimo supradice apud M. p<sup>r</sup>o  
 declaraverunt & adjudicaverant p<sup>r</sup>o  
 C. S. fore Decottozem a p<sup>r</sup>imo die J.  
 Anno Dom<sup>i</sup> 1630. supradice & sic fuisse  
 & semper ab eod<sup>e</sup> p<sup>r</sup>imo die J. conti-  
 nuasse etiam ubi p<sup>r</sup>o examinationis ap-  
 paruisse p<sup>r</sup>o C. B. W. H. & A. P. Com-  
 missat p<sup>r</sup>o qd<sup>e</sup> p<sup>r</sup>o C. ante p<sup>r</sup>o die diem  
 J. & continue postea fuit p<sup>r</sup>o iij die  
 M. Anno septimo supradice extitit ve-  
 re indebitae p<sup>r</sup>o sepealib<sup>9</sup> p<sup>r</sup>onis &  
 aliqui querebant relebatonem p<sup>r</sup>o Com-  
 mission p<sup>r</sup>o & contribuere erga custas-  
 gia p<sup>r</sup>secutionis & executionis ejusdem  
 Commissionis in sepeal denariozum  
 summis in toto se attinged ad 5013 l.  
 & 12 s. ultra 40 l. expendit p<sup>r</sup>o eadem  
 p<sup>r</sup>onas in custas circa p<sup>r</sup>secution & ex-  
 ecution Commissionis p<sup>r</sup>o Ac etiam  
 ubi p<sup>r</sup>o examinationem p<sup>r</sup>o apparebat  
 p<sup>r</sup>o C. B. W. H. & A. P. quod p<sup>r</sup>o C.  
 S. p<sup>r</sup>o p<sup>r</sup>imo die Junij Anno Dom<sup>i</sup>  
 1630. supradice & diu ante & postea  
 fuit & p<sup>r</sup>o iij die M. Anno septimo su-  
 pradice existit leisit<sup>9</sup> in Dominico suo  
 de Statu Hereditario de & in uno  
 Mesuagio, &c. Ac etiam ubi appa-  
 rebat p<sup>r</sup>ae C. B. W. H. & A. P. Com-  
 missionariis p<sup>r</sup>o qd<sup>e</sup> p<sup>r</sup>o summa 100 l.  
 p<sup>r</sup>o valore Bonorum & Catallorum p<sup>r</sup>o  
 p

p pſae A. ſic ut pſertur debitaſae tunc  
 debite fuit pſae C. S. a pſae A. B.  
 pſed C. B. W. H. & A. P. pro dand'  
 ſatiſfactionem pſictis ſeperalib' per-  
 ſonis Creditorib' pſae C. S. p debitis  
 ſuis pſictis & p ulteriozi executione  
 Statute & Commiſſion pſd' p & in con-  
 ſideratione ſumme 360 l. Regalis Mo-  
 nete Anglie iſtis pſar C. B. W. H.  
 & A. P. p pſae C. S. ſolue in die  
 Maij Anno Regni noſtri ſeptimo ſu-  
 pradice apud H. pſd' inter ipſos C. B.  
 W. H. & A. P. p nomina, &c. ex una  
 pte & pſae C. S. p nomen, &c. ex al-  
 tera parte ſactam cujus alteram par-  
 tem ſigillis pſd' C. B. W. H. & A. P.  
 ſignae & in Cancellaria noſtra infra  
 ſex Menſes tunc poſtea de recozdo it-  
 rotulae geren' dae eiſdem die & Anno  
 idem C. S. hic in Curia noſtra pſd'  
 cozam Juſticiarijs pſd' pſere dederunt  
 & conceſſerunt pſae C. S. totum Sta-  
 tum ius titulum & intereſſe, &c. Ac  
 etiam pſed C. B. W. H. & A. P. Com-  
 miſſionarij pſd' p Indentur ſuam pſd'  
 aſſignaverunt & tranſtulerunt pſae C.  
 S. Executorib' & Adminiſtratorib'  
 ſuis pſd' debitum ſive ſummam 100 i.  
 pſd' C. S. p pſae A. B. ut pſertur in-  
 bene eſſe debite ac omne legale pſicud  
 (Anglice Intereſt Mony) & alia bene-  
 ficium & pſicuum pbenicid vel ſurgen'  
 ex inde aut ſuperinde debite put p In-  
 denturam pſd' inter alia plenius liquet  
 &

Assignment  
 Enrolled.

Averment.

Et apparet Et idem T. G. in facto dicit qd' pd' debitum sive summa 100 l. per Commissionarios pdice ut pferunt inhene esse debite & insolue p plac. A. B. Vid' & p eisdem Commissionarios pdice T. G. ut pferunt assignat & pd' 100 l. p valore Bonoz & Catalloz pd' R. B. tempore mortis sue que plac. Constabulari Castri Dover & Custos quinq; Portuum pd' ut pferunt retornavit super pdcō brevi de Fi. fac. quod pdice A. B. ut pferunt sunt unum & idem debitum & non aliud neq; diversa quodq; idem debitum sive summa 100 l. adhuc totaliter insolue existit & assignat fuit in forma pdice pdcō T. G. Et ulterius quod pd' Dna Bingley Vid' in pd' Indentura Assignationis mentionat & pd' A. B. in pdcō brevi de testat. fi. fa. & retorn inde nominat modo defendens sunt una & ead' psona & non alia nec diversa put ex insinuatione pd' T. G. assignat debite pd' T. G. Decretis scdm formam Statut de Decretis ii. 2. (Anglice Bankrupts) in ea parte pb. & accepim' Et quia volum', &c. p ppos. &c. si quid, &c. quare pd' T. G. executionem versus eam de pd' 100 l. p valore Bonoz & Catalloz que fuere R. B. tempore mortis sue p pd' A. ut pferunt devastat plac. T. G. p pd' Commissionarios in forma pd' assignat here non debeat juxta formam Reges & Stat. pdice si, &c. Et habeas, &c.

An

*An Indenture of Assignment by the Commissioners of Bankrupts.*

**T**HIS Indenture made, &c. in the Third Year of the Reign of our Sovereign Lord and Lady *William and Mary*, by the Grace of God of *England, Scotland, France and Ireland* King and Queen, Defenders of the Faith, &c. Between *A. B. Esq; C. D. Gent. and E. F. Gent.* of the one part, and *T. R. of London Stationer*, of the other part. ~~Whereas~~ the King and Queens Majesties Commission, under the Great Seal of *England*, grounded upon the several Statutes made concerning Bankrupts, bearing date at *Westminster* the, &c. day of, &c. last past, hath been awarded against *Elizabeth K. of, &c. in the County of, &c. Chapwoman*, and directed to the said *A. B. C. D. E. F.* together with *W. B. Esq; and J. G. Gent.* thereby giving full Power and Authority unto the said Commissioners, four or three of them, <sup>Commission.</sup> whereof the said *A. B. or W. B.* to be one to execute the same; As by the said Commission, relation being thereunto had, the same doth, and may more fully and at large appear. And ~~Whereas~~ the said Commissioners, Parties to these Presents, or the major part of the Commissioners by the said Commission authorised, having begun to put the said recited

Q Com.

Become Bank-  
rupt.

Commission in Execution, upon due examination of Witnesses, and other good proof upon Oath before them taken, do find that the said E. K. hath for the space of six years last past, or thereabouts, used and exercised the Trade and Profession of a Milliner or Country Mercer, in Buying and Selling of Silks, Stuffs and other Wares and Commodities belonging to her said Trade, at her House and Shop in C. aforesaid; and sought and endeavoured to get her Living by Buying and Selling, and that she the said E. K. so seeking and endeavouring to get her living by Buying and Selling, during the time of her said Trading and Dealing, did become justly and truly indebted, and still doth owe and stand indebted unto the above named T. R. and others her Creditors in the sum of Three Hundred Pounds of Lawful Mony of England, and upwards; and being so indebted, she the said E. K. did in the judgment of the said Commissioners, Parties to these Presents become Bankrupt to all intents and purposes, within the Compass, true intent and meaning of the several Statutes made concerning Bankrupts, or within some, or one of them, before the date and issuing forth the said Commission. And **Whereas** also the said Commissioners, Parties to these Presents, or the major part of the Commissioners, by the said Commission authorised, having also found out and discovered, that the said E. K.

E. K. at the time, and since she became a Bankrupt, as aforesaid, was possessed of, and interested in divers Goods, Wares and Merchandises, Household-stuff and Implements of Household, Bedding, Linnen, Brass, Pewter and other Commodities; and that other Goods of hers were removed and come to the Hands, Custody and Possession of divers and sundry Persons, since the time as she the said E. K. became a Bankrupt, as aforesaid, and such Goods being returned, and the same, and all other the Goods, Wares and Merchandises Household-stuff and Implements of Household, and other Commodities remaining in the House and Shop of the said E. K. were seised by vertue of the Commissioners Warrant, and the same being so seised, the Commissioners, Parties to these Presents, or the major part of the Commissioners, by the said Commission authorised, caused such Goods, Wares, Merchandises and Commodities to be inventoried and duly appraised by honest Men of Skill and Judgment, who did value and apprise such Goods, Wares and Merchandises, Household-stuff and Commodities, at the full values as by the particular Inventory and Appraisalment sent unto the Commissioners may appear. The value whereof in the total amounted unto the sum of 248 l. 17 s. of Lawful Mony of England. And whereas the said T. K.

Q 2

hath

Bankrupts  
Debts.

The Assign-  
ment.

hath since sold and disposed of all the before-mentioned Goods, Wares and Commodities, at the full values mentioned and expressed in such Appraisalment, unto several persons, some whereof are paid for, and others as yet unpaid for, and owing upon Securities. And they the said Commissioners, Parties to these Presents, do further find, that there are divers Debts, sum and sums of Money due and owing unto the said E. K. and her Estate by, and from divers and sundry persons, the particulars of which said Debts, and the several and respective persons names that do severally and respectively owe the same, are mentioned, set down and expressed in a Schedule, indented to these Presents annexed. Now this Indenture witnesseth, That the said Commissioners, Parties to these Presents, by form and vertue of the said Commission, and the several Acts of Parliament therein mentioned and expressed, and also for, and in consideration of the Covenants herein, after on the part and behalf of the said T. R. his Heirs, Executors and Administrators covenanted to be performed and done, **Have Ordered**, Assigned and set over, and by these Presents do as much as in them the said Commissioners lieth, and they lawfully may, Order, Assign and set over unto the said T. R. the before-mentioned sum of 248 l. 17 s. and every part and parcel there-



thereof, being the same Monies raised and advanced by sale of the afore-mentioned Goods, Wares and Merchandizes so belonging and appertaining to the said E. K. and her Estate, as before is expressed, and also all the Debts, sum and sums of Mony mentioned and expressed in the said Schedule annexed; and all other Debts due and owing unto the said E. K. by, and from the persons therein named as Debtors. To have and to hold the said sum of 248 *l.* 17 *s.* and every part thereof; and also the said Debts, sum and sums of Mony so mentioned, set down and expressed in the said Schedule annexed, and all other Debts, sum and sums of Mony whatsoever, due and owing to the said E. K. and her said Estate, by, and from the respective persons therein named and mentioned as Debtors unto the said T. R. his Executors, Administrators and Assigns for evermore. In trust nevertheless, to, and for the use and behoof herein after mentioned and expressed (that is to say) in trust to, and for the use, benefit, behoof and advantage of the said T. R. and all other the Creditors of the said E. K. who have already sought, or shall hereafter in due time come in as Creditors into the said Commission, and seek relief thereby, and contribute to the Charges thereof, according to the Direction and Limita-

Q 3

tion

Covenant to  
sue for the  
Debts.

And make Ac-  
count.

tion of the severall Statutes in that behalf made and provided, and to, and for none other use, intent or purpose whatsoever. And the said T. R. for himself, his Heirs, Executors, Administrators and Assigns, doth Covenant, Promise, Grant and Agree to, and with the said Commissioners, Parties to these Presents, and to, and with every and each of them, in Manner and Form following (that is to say) that he the said T. R. his Heirs, Executors or Administrators, or some, or one of them, shall and will with all convenient speed, and by all lawful ways and means sue for, and recover the Debts mentioned in the said Schedule hereunto annexed; and from, and after recovery and receipt thereof shall, and will upon reasonable request, or notice in writing to him for that purpose made, or given by the Commissioners, Parties to these Presents, or the major part of the Commissioners, by the said Commission authorised, make and give a just, true and perfect Account unto the said Commissioners of the said sum of 248 £ 17 s. before-mentioned, as soon as he shall have received the same, and also of all such sums of Money as he the said T. R. shall have had raised or received out of the Debts hereby assigned by force and vertue of these Presents, and shall pay over the said sum of 248 £ 17 s. and such other Monies as he

he shall have received on Account of the Debts, so by these Presents Assigned unto the said Commissioners, Parties to these Presents, or the major part of the Commissioners, by the said Commission authorised, or dispose thereof as they shall Order, Direct and Appoint in some convenient time from, and after he the said T. R. his Executors, Administrators or Assigns shall have had, and received the same, or any part thereof, to the end the said Commissioners may Order, Distribute, Divide and Dispose thereof for, and towards the Payment and Satisfaction of the Debts due and owing by the said E. K. to such of her Creditors, who have already sought, or shall hereafter come in and seek relief by vertue of the said Commission, and contribute towards the Charges thereof, as aforesaid. **And moreover,** That the said T. R. his Heirs, Executors and Administrators shall and will from time to time, and at all times hereafter, well and sufficiently Save, Defend, keep Harmless and Indemnified the said Commissioners, Parties to these Presents, and every and each of them, their, and every of their Executors and Administrators, and his and their Bodies, Lands and Tenements, Goods and Chattels, of and from all manner of Actions, Costs, Suits, Arrests, Losses, Damages and Expences whatsoever, which they or any of them shall,

Covenant to  
save the Com-  
missioners  
Harmless.

Q 4

or

or may suffer, sustain, or be put unto, for, or by reason of this present Deed of Assignment, or any other matter or thing whatsoever, lawfully done or executed by vertue of the said Commission, or their, or any of their lawful intermedlings or dealings in any of the Estate of the said E. K. by Force, Vertue or Colour thereof. **In Witness,**  
*&c.*

The Schedule whereunto the Deed or Indenture annexed, refer.

Debts due and owing to the said E. K. and her Estate.

**Imprimis,** Due and owing from, *&c.*

**Item.**

Ano-

*Another Form of an Assignment.*

**T**HIS Indenture made, &c. Between A. B. of, &c. Esq; C. D. of, &c. and E. F. of, &c. of the one part, and J. S. of, &c. of the other part. **Whereas** the King and Queens Commission, under the Great Seal of *England*, bearing date at *Westminster* the day of      last past, grounded upon several Statutes made concerning Bankrupts, hath been awarded against P. R. of, &c. directed to the said A. B. C. D. and E. F. and unto G. H. and J. K. Gent. thereby giving full Power and Authority unto the said Commissioners, four or three of them, whereof the said A. B. and G. H. to be one to execute the same. As by the said Commission, relation being thereunto had, it may more at large appear. **And whereas** the said Commissioners, or the major part of them, having begun to put the said Commission in execution, upon due examination of Witneses, and other good proof upon Oath before them, or the major part of them, according to the Form and Prescript of the said Commission, and the said Statutes taken, and otherwise, the said Commissioners, Parties to these Presents, have found, and do find that the said P. R. did for the space of  
seven

seven years and upwards together, last past, before the suing forth the said Commission, use and exercise the Trade of—&c. at his or (*her*) Shop in W. afore-said, in the said County of, &c. and in particular in that his Trade did buy and sell Iron Wares, and several other sorts of Wares and Merchandizes, and other Commodities relating to that Trade whereby he did seek his Trade of Living (that is to say) by Buying and Selling; and that he the said P. R. in the time of such his Trading, and by reason thereof did become indebted unto the said J. S. and other his Creditors, in the sum of One Hundred Pounds and upwards, and for which the said J. S. on the behalf of himself and other Creditors of the said P. R. hath prayed the aid and relief of the said Commission and Statutes before the said Commissioners, Parties to this Indenture, the said sum of One Hundred Pounds and upwards, being yet unpaid, and owing to the said J. S. &c. And the said Commissioners have also found, and do find, that the said P. R. being so indebted, as afore-said, did next before the date and suing forth the said Commission (in the judgment of the said Commissioners, Parties to these Presents) become a Bankrupt to all intents and purposes, within the Compass, true Intent and meaning of the several Statutes made concerning Bankrupts, or some

some, or one of them. And whereas the said Commissioners, Parties to these Presents, in further execution of the said Commission, upon like due examination of Witnesses, and other good proof upon Oath before them, or the major part of the Commissioners before named, have found, and do find, or it otherwise appeareth to them, that since such time that the said P. R. became a Bankrupt, as aforesaid, he the said P. R. was lawfully possess of and interested in a certain Lease, and Goods, Wares, &c. in the Schedule, &c. Now this Indenture Witnesseth, that the said Commissioners, Parties to these Presents, being the major part of the Commissioners, in the said Commission named, in further execution of the said Commission, and of the Statutes therein mentioned, and by Force and Vertue of the same, and of the Authority to them, or the major part of them given thereby; in consideration, &c. Have as much as in them lieth, Bargained, Sold, Assigned, Transferred and Set over: And by these Presents (as much as in them lieth) do Bargain, Sell, Assign, Transfer and Set over unto the said J. S. his Executors, Administrators and Assigns, all and singular the said afore-mentioned term of Years, &c. To have and to hold, ask, demand, sue for, recover and receive all, and singular the said Lease and Term

Here should be  
two *Habendums*,  
one of the  
Term and the  
other of Goods,  
&c.

Term of Years, Goods, Wares, &c. mentioned and expressed in a Schedule hereof hereunto annexed, and all, and every other Debt and Debts, Sum and Sums, of Mony whatsoever, by these Presents Ordered, Assigned and Set over, or in any wise due, or owing, or belonging to the said P. R. or his Estate, by or from all, or any the persons named as Debtors in the same Schedule, or otherwise unto him the said J. S. his Executors, Administrators and Assigns, Upon Trust nevertheless, and to and for the intents and purposes following (that is to say) to, and for the use, behoof, benefit and advantage of them the said J. S. &c. and all such other Creditors of the said P. R. as have already sought, or shall hereafter in due time come in and seek reliefe by vertue of the said Commission, and contribute towards the Charge thereof, according to the direction and limitations of the said Statutes, as to so much of the said Estate, both Real and Personal of the said P. R. and other the Premises, Ordered, Directed, Bargained, Sold, Assigned and Set over to the said J. S. as aforesaid; and of the Monies which shall, or may be had or raised by, or for the same, as the Debts of the said Creditors do, and shall amount unto; And as to the residue and surplusage of the said Estate, if any such shall be, the same shall be in trust for



for the said P. R. his Executors and Assigns, according to the said Statutes, and the true intent and meaning thereof, and to, and for none other use, intent or purpose whatsoever. And to, and with the said Commissioners, Parties to these Indentures, their Executors, Administrators and Assigns, the said P. R. for himself, his Executors and Administrators, doth Covenant, Promise and Grant in Manner and Form following (that is to say) that he shall, and will from time to time, and at all times hereafter, with all convenient speed use his best means and endeavour by Suit in Law or otherwise to sue for, recover, receive and get into his and their possession, all, and singular the aforesaid Goods, Wares, Merchandizes, Household-stuff, Debts and Sums of Money, by these Presents Assigned and Set over, as aforesaid, and after Possession had and obtained of the said Goods, Wares, Merchandizes, Household-stuff, Debt, Sum and Sums of Money, and other things, or any part thereof, shall, and will with like convenient speed make Sale and Disposition thereof to, and for the most and best value and advantage he and they may or can *bona fide*. And further, that he, his Executors and Administrators shall, and will from time to time, and at all times hereafter upon any reasonable request and notice, account to, and with the Covenant to get in the Debts.  
said To Account.

said Commissioners, Parties to these Presents, or any of them, their, or any of their Executors or Administrators; what, and how much Mony, or other satisfaction they shall then have received, raised or recovered by Force, Vertue or means of this present Deed or otherwise, out of the Estate of the said P. R. and such Mony or other satisfaction as upon such Account or Accounts shall appear to be so had, raised, obtained or received, shall, and will upon like reasonable request and notice, well and truly pay, or cause the same to be paid unto them the Commissioners, Parties to these Presents, or some, or one of them, to the end the same may be by them Ordered, Disposed, Distributed, Divided and Set over unto them, the afore-named Creditors, and such others of the Creditors of the said P. R. as have already sought relief, or shall hereafter in due time come in, and seek relief by the said Commission, and contribute towards the Charge thereof, according to the Limitations and Directions of the said Statutes, as aforesaid. **And to, and with the said Commissioners,** Parties to this Indenture, and the said J. S. his Executors and Administrators, and every one of them, the said R. B. &c. (*the Creditors*) do hereby Covenant and grant for themselves, their Heirs, Executors and Administrators, that they, and every of them

Covenant from  
the Creditors.

them from time to time, for ever hereafter, according to, and after the share and proportion of his or their particular Debt or Debts to him or them now due and owing from the said P. R. with, and in respect to the several Debts of all such Creditors as hereafter in due time shall come in and seek relief by the said Commission, shall, and will pay, bear, perform and do his and their share and proportion of all Charges and Expences, Trouble and Travel which already hath been, or hereafter shall be meet, requisite or convenient, or shall happen in or for the suing forth, prosecuting or executing of the said Commission, or in, or for the maintaining, justifying or defending the same, or all, or any proceedings which already have been, or hereafter shall be thereupon, or for the securing and keeping Harmless or Indemnified the said Commissioners, Parties to these Presents, and the said J. S. and every, or any of them, or any of their Executors or Administrators of, and from all Actions, Suits, Arrests, Trouble, Damages, Charges, Travel and Expences whatsoever which may arise, happen or be occasioned to every or any of them, by reason of the said Commission, or the suing out, prosecuting or executing thereof, or of any matter or thing already done, or which hereafter shall be done in prosecution of the said Commission, or by reason

reason of this present Indenture, or the Trust, or any other matter or thing therein comprised, specified or mentioned, or any thing which is, or shall be done in pursuance thereof. In Witness,

*Memozandum.* It were better to have in this two *Habendum's*, one of the Term, and another of the Goods.

*A Deed of Distribution from Commissioners of Bankrupts to the Creditors.*

The Commis-  
sion.

**T**HIS Indenture made, &c. Between J. C. P. B. Esquires and W. F. Gent. of the one part, G. H. J. K. &c. of the other part. *Whereas* the Kings Majesties Commission under the Great Seal of *England*, grounded upon the several Statutes made concerning Bankrupts, bearing Date at *Westminster*, &c. hath been awarded against the said R. G. directed unto R. A. P. C. Esquires, the said J. C. P. B. and W. F. Gent. as by the said Commission, wherunto Relation being had, more fully and at large it may and doth appear. And *Whereas* at the Humble Petition of the said H. N. exhibited to the Right Honourable, *George Lord Jeoffreys*, Baron of *Wemm*, Lord High Chancellor of *England*, the said Commission was renewed, and the said

saïd A. B. and C. D. therein named, instead of them the saïd R. A. &c. together with them the saïd J. C. P. B. &c. thereby giving full Power and Authority unto them the saïd A. B. and C. D. &c. four or three of them, whereof the saïd A. B. or C. D. to be one to execute the same Commission; as in and by the same renewed Commission under the Great Seal of England, bearing Date at Westminster, &c. whereunto relation being had, more fully at large it may and doth appear. And **Whereas** the saïd Commissioners, Parties to these Presents, having begun to put the saïd Commissions in Execution upon due examination of Witnesses and other good proof upon Oath before them taken, have found that the saïd R. G. for the space of, &c. past before the Date and Suing forth of the saïd Commissions, used and exercised the Trade or Profession of, &c. and did receive and take to Pawn upon Credit, Rings, Plate, Jewels, Household-Goods, Wearing Apprel, and other Goods, and did Buy, Sell and Utter several, great quantities of the like Goods, and other Wares and Merchandizes, and had and kept an House, Shop and Warehouse for that intent and purpose in, &c. in the Parish of, &c. and did seek and endeavour to get his Living by Buying and Selling as other Broakers and Traders use to do. And that he the saïd R. G. so seeking  
R and

and endeavouring to get his Living by Buying and Selling, Trading and Dealing, as aforesaid is mentioned, did during that time of his said Trading and Dealing become justly and truly indebted, and still doth owe and stands justly and truly indebted unto the above-named A. B. C. D. M. L. and J. B. in the sum of Fifteen Hundred Pounds of Lawful Mony of *England*, and unto divers other persons his Creditors above also named, divers and sundry other Sum and Sums of Mony, amounting in the whole to the Sum of, &c. of like Lawful Mony, and being so indebted, he the said R. G. did in the judgments of the said Commissioners, Parties to these Presents, become Bankrupt to all intents and purposes, within the Compass, True intent and Meaning of the several Statutes made concerning Bankrupts, or within some or one of them, before the date and suing forth of the said first recited Commission. And Whereas the said Commissioners, Parties to these Presents, in further execution upon like due examination of Witnesses, and other good proof upon Oath before them taken, having also found that at such time as he the said R. G. became Bankrupt, as aforesaid, there were divers Good Wares and Merchandizes, as well of and belonging to him the said R. G. as what were Pawned unto him as Securities for Monies

nies. by him lent, and also several Sum  
and Sums of Ready Monies and other  
Commodities of and belonging to the  
said R. G. and his Estate in his said  
late Dwelling-House, situate and being  
in, &c. Did by their Deed or Indenture  
of Assignment, under their Hands and  
Seals, and duly executed, bearing Date,  
&c. for and upon Considerations, and to  
and for the Uses, Intents and purposes  
therein mentioned, Assign and Set Over  
unto the said T. P. H. N. M. L. and J. B.  
their Executors, Administrators and As-  
signs, All and Singular the said Goods,  
Wares, Merchandizes, Ready Monies  
and other Commodities, the particulars  
whereof are mentioned, set down and  
expressed in the Schedule or Inventory  
thereof to the said Deed or Indenture of As-  
signment annexed, as by the same Inden-  
ture of Assignment relation being thereun-  
to had, may more at large appear. And  
~~Whereas~~ the said Commissioners, Par-  
ties to these Presents, in further execu-  
tion of the said Commission, upon suffi-  
cient proof upon Oath of several Witnesses,  
have also found, that he the said R. G.  
at the time he became Bankrupt, as a-  
foresaid, stood justly and truly indebted,  
and still doth owe and standeth justly  
and truly indebted unto the said T. P.  
in the Sum of, &c. Principal Mony,  
also to the several persons his Creditors  
above-named, in several Sums of Mony,

R 2

amount-

amounting in the whole to the Sum of, &c. of Lawful Mony of *England*, the particulars whereof, together with the severall and respective persons, that as well have sufficiently proved, as such of them that have not well proved their severall and respective Debts (who are not hereby to have or receive any benefit or advantage by this present Deed of Dividend, until such time as they shall so have respectively sufficiently proved their Debts and Demands) are mentioned, set down and expressed in the Schedule, indented to these Presents annexed. And **Whereas** the full space of four Months since the Date and Suing forth of the said Commissions is fully elapsed and expired, and no other Creditors of the said R. G. other than the persons above named have as yet come in, and sought Relief by the said Commissions, or paid, or contributed towards the Charges thereof, according to the direction of the said Statutes for Debt or Debts due, or claimed to be due and owing by and from the said R. G. And **Whereas** the said Assignees T. P. H. N. M. L. and J. B. have actually raised and received by vertue of the said Assignment out of the Goods and other things thereby assigned, the Sum of, &c. of Lawful Mony of *England*, the particulars whereof, and how the same hath been received, are mentioned,

set



set down and expressed in the said Schedule, indented to these Presents, likewise annexed. And **Whereas** the said Creditors above-named parties hereunto, have made already, and by these Presents do make it their Request unto us the said Commissioners, Parties to these Presents, to Order, Distribute, Divide and Set Over unto, and amongst the said Creditors, Parties to the Presents, (or at least such of them as either have, or shall in due time make good and sufficient proof of their several respective Debt and Debts) the said Sum of, &c. for and towards payment and satisfaction of their respective Debts, in the said Schedule hereunto annexed, mentioned and expressed, ratably and proportionably, according to their several and respective Debt and Debts, at and after the rate of Three Shillings and Eight Pence in the Pound of their respective Debts. **Now this Indenture witnesseth**, That the said Commissioners, Parties to these Presents, in further execution of the said Commissions and Statutes therein mentioned, and by Force and Vertue thereof, and for and in consideration that a Due and Legal Distribution may be effected and made as to the said Sum of, &c. before-mentioned, Have Ordered, Distributed, Disposed, Divided and Set Over, and by these Presents, do as much as in them, the said Commissioners, Parties to these

Distribution.

these Presents, lieth, and they lawfully may Order, Distribute, Dispose, Divide and Set Over, unto and amongst them the said Creditors above-named, one of the Parties to these Presents, the said Sum of, &c. in Manner and Form following (that is to say) to each, and every one of them the said Creditors, as have well and sufficiently made proof of their severall and respective Debt and Debts, or shall in due time make such proof, a part and proportion of the same share and share-like, according to the quantity and proportion of their said Debts, in the said Schedule indented hereunto annexed, mentioned and expressed, at, and after the rate of 3 s. and 8 d. in the Pound of their said respective Debts; ~~To have and to hold~~, and enjoy the said Sum of, &c. and every part and parcel thereof unto them the said Creditors, Parties to these Presents, their Executors, Administrators and Assigns, as their, and every of their own proper Monies and Estate, towards payment and satisfaction of their said severall and respective Debts, so farforth as the same will amount unto the same, to be ratably and proportionably distributed and divided, as herein before is mentioned. And the said T. P. H. N. M. L. and J. B. and the rest of the Creditors above-named, one of the Parties to these Presents, for themselves severally, and for

for their severall and respective Executors and Administrators, and not jointly one for the other, do Covenant, Promise and Grant to, and with the said Commissioners, Parties to these Presents, their respective Executors and Administrators, and to, and with every of them by these Presents, That they the said T. P. H. N. M. L. and J. B. and the rest of the Creditors above-named, one of the Parties to these Presents, their respective Executors and Administrators, shall and will so farforth as concerneth his or their particular Debt and Interest herein, well and sufficiently save harmless and keep indemnified all the said Commissioners, by the said Commission Authorized, and every of them, their and every of their Bodies, Lands, Tenements, Goods and Chawels, and every part thereof, of, from touching and concerning, All, and all manner of Actions, Suits, Arrests, Costs, Damages and Expences whatsoever, which they, or any of them may suffer, sustain, or be put unto for, or by reason of this present Deed of Distribution, or any other Act, matter or thing whatsoever lawfully done or executed by vertue of the said Commissions, or their, or any of their lawful intermeddlings in any of the Estate of the said R. G. by Force, Vertue or Colour thereof. **In Witness** whereof the Parties to these Presents, first above-named, have interchangeably, &c.

R 4

Plea

*Bill by a Principal Creditor to call the Assignees to Account, and discover what of the Bankrupts Estate came to their hands.*

**I**N humble manner complaining, sheweth unto your Lordships your Orator C. J. of London, Merchant. **Whereas** in the year 1658. and some few years afterwards your Orator had dealings with one J. Robinson of, &c. in the way of Merchandise, whereby he became Debtor unto your Orator, for Goods and Merchandizes sold and delivered to him the said J. R. and for several sums of Money which he the said J. R. had of your Orator, and were paid for him by your Orator upon Bills of Exchange and otherwise, in the sum of Four and Twenty Hundred Pounds Sterling; and he the said J. R. being so indebted to your Orator in such a great sum of Money; and sometime in the year 1661. he the said J. R. failing in his Estate, and becoming Bankrupt, your Orator for the recovery and gaining his said Debt out of the Estate of the said J. R. he himself being gone beyond the Seas, your Orator did sue forth his Majesties Commission, grounded upon the several Statutes made concerning Bankrupts, against him the said J. R. and accordingly the same was

was granted and issued forth against him at the sole Instance and Petition of your Orator on the 24th of May, in the 13th year of, &c. Anno Dom. 1661 directed to J. P. R. A. Esquires, J. L. H. N. and R. H. Gent. the major part of which said Commissioners did put the said Commission in Execution, and sate severall times in the said year 1661. And after for the discovering and finding out of the Estate of the said J. R. And having so done, did agree by, and with the consent of the other Creditors of him the said J. R. that came into the said Commission, that your Orator, and one E. M. of, &c. another of the said R.'s Creditors that was come into the said Commission, should be Assignees of the Estate of the said J. R. and should be empowered by them the said Commissioners by Deed of Assignment under their Hands and Seals, to gather in and receive the same Estate in trust, and for the use of themselves and all other the Creditors of the said J. R. that should duly seek relief by the said Commission, and towards satisfaction of their severall Debts; but notwithstanding such Agreement and Consent of the Commissioners and Creditors, the said Commissioners sometime afterwards, at the instigation of the said E. M. and of P. S. another of the Creditors who was come into the said Commission, and had before consented to your Orators being one

one of the Assignees, as is afore-mentioned, did make their Deed or Deeds of Assignment of the said J. R.'s whole Estate, of a very considerable value in Goods, Debts and Monies, amounting to 3000 l. and upwards, to them the said P. S. and E. M. to both whom the said R. was indebted 100 l. or thereabouts, your Orator being a Creditor for 2400 l. as afore is mentioned; part of which said Estate was inserted in a Schedule, annexed to one part of the said Assignments; a Copy whereof is also herunto affixed. And your Orator further sheweth to your Lordship, that the said P. S. and E. M. being so constituted and made Assignees of the Estate of the said J. R. by the major part of the said Commissioners, by one or more Deed or Deeds of Assignment under their Hands and Seals, and impowred to recover, gather in and receive the same Estate in trust for the use of your Orator, and other the general Creditors of the said J. R. that should duly seek relief by the said Commission; they the said P. S. and E. W. did enter into a Covenant under their Hands and Seals, to, and with the said Commissioners to give and render unto them upon reasonable request, an account of whaffever Monies they, or either of them should receive and gain in of the said J. S. and relating to his Estate, and pay and satisfy the said Monies to them the said

said Commissioners, to the end the same might be by them divided equally amongst all the Creditors of the said J. R. that should come into the said Commission, proportionable to their several Debts. And your Orator further sheweth, that they the said P. S. and E. M. being so intrusted, as aforesaid, did recover and gain in several great sums of Money which belonged to the Estate of the said J. R. and did keep the same in their own hands for several years, amounting to 2000 l. or more, for which hitherto they, or either of them have not given any account, the said Commissioners themselves, who might have called them to such account, according to their Covenants, being deceased. Whereby they the said Assignees have for several years kept all the said Monies, and intend still so to do, and to pay no proportion of the same to your Orator for his said great Debt of 2400 l. or to the other Creditors, to your Orators knowledge, without they be compelled thereunto by order of this Honourable Court, contrary to all Equity and Good Conscience. And for that your Orator is no ways relievable herein, but in Equity before your Lordship, or to have any discovery of the said matters, save in this Honourable Court. And for that also your Orators Witnesses are either dead or in places remote and unknown: To the

the end therefore, that your Orator may receive his due and equal proportion of all Monies come to the hands of the said P. S. and E. M. relating to the said J. R.'s Estate, for, and in respect of his said Debt of 2400 l. and proportionable thereunto. And to that purpose, that the said P. S. and E. M. may bring in a true and particular account upon their Oaths, of all the Estate that hath been heretofore assigned to them by the said Commissioners, the same being in trust, as afore-mentioned, and declare whether they have had one or more Assignments made to them of the same, together with the Dates thereof, and the Covenants therein contained, and whether they sealed the Counterpart of such Assignment, and may set forth a true particular of how much of the said Estate hath been received by them, or either of them, or under them, and of, and from whom, and when, and may declare upon their Oaths, what other Creditors of the said J. R. did in due time come into the said Commission, and did pay their Contribution Mony as your Orator hath done; and to the end that the Monies found to be received by them the said P. S. and E. M. or either of them, may be by Order or Decree of this Honourable Court so divided, that your Orator may have his proportion thereof, and your Orator have relief in the pre-



premisses, according to Equity and Good Conscience ( the same to go to, and to be applied towards the satisfaction of a certain Debt due from your Orator to W.R. Esq; according to a Proviso in a certain Act of Parliament made in the 30th year of his now Majesties Reign, intituled *An Act for the further relief and discharge of poor distressed Prisoners for Debt* ) And that the said S. and M. may true answer make to all, and every the matters aforesaid, May it please your Lordship, &c.

As for the Schedule fixt to the Bill, Intitle it thus.

The Schedule or Inventory, whereof mention is made in the Deed, whereunto the same is annexed, and whereunto the Bill annexed doth relate, as followeth, (*viz.*)

Monies come to the Hands and Possession of several persons of the said J.R.'s and belonging to his Estate.

**Imprimis**, In ready Mony which came to the Hands and Possession of—  
100 l.

**Item**, &c.

Debts owing to the said J. R. and his Estate.

**Imprimis**, Owing by *James West*.—

**In toto**, &c.

*Bond*

*Bond from the Assignees to the Principal  
Creditor in 2000*l.* to pay his proportionable share.*

**T**HE Condition of this Obligation is such, Whereas a Commission under the Great Seal of England, grounded upon the several Statutes made concerning Bankrupts, hath been awarded against J. R. late of the City of London, Mercer, directed to certain Commissioners therein named, to execute the same: And whereas the major part of the Commissioners, by the said Commission authorized, in Execution of their said Commission, have by their Deed Indented of Distribution, bearing Date with these Presents, distributed and divided divers Debts and sums of Money, mentioned and expressed in a Schedule to the said Deed annexed unto, and amongst the above bounden P. S. and E. M. and other the Creditors of the said J. R. duly seeking relief by the said Commission, according to the limitation of the several Statutes, whereupon the same was grounded (to wit) according to the quantity and proportion of their several and respective Debts, in the said Deed also expressed; wherein the Debt owing to the above-named C. J. is mentioned, to be the sum of 1144*l.* 8*s.* 5*d.* And whereas the said C. J.

C. J. hath formerly given consent, that the major part of the Commissioners should by their Deed of Assignment Assign and Set Over unto the said P. S. and E. M. amongst other things, All, and singular the said Debts and sums of Money mentioned in the said Schedule, which the said Commissioners have done accordingly; if therefore the said P. S. and E. M. shall from henceforth, and at all times hereafter, upon reasonable demand, and sufficient Acquittance and Acquittances, given in writing to them, or any of them respectively in that behalf well and truly pay, or cause to be paid unto the said C. J. his Executors or Administrators, or to his or their Assignee or Assignees, lawfully authorized by writing under his and their Hands and Seals, witnessed before two or more persons of Credit, to receive the same (that is to say) of all such Quanties and Proportions of Monies of the said sum of 1144*l.* 8*s.* 5*d.* mentioned in the said Deed to be owing to the said C. J. as they the said P. S. and E. M. or either of them, their, or either of their Executors, Administrators or Assigns should receive of any person or persons, by means or vertue of the said Indenture of Assignment, according to the Quantity and Proportion of the said sum of 1144*l.* 8*s.* 5*d.* in reference to the Debts of other Creditors in such Deed mentioned, or according to the Quan-

Quantity or Proportion of so much thereof, as shall stand, and be duly proved before the major part of the Commissioners, by the said Commission authorised, and by them signified under their Hands, so to be proved according to a Proviso in the said Deed of Dividend mentioned, and that also in proportion with the sums of Money mentioned in the said Schedule to be owing unto other the Creditors of the said J.R. then this present Obligation to be void, or else to remain in full Force and Vertue.

Plea

*Plea and Demurrer to a Bill brought by the Complainants as Creditors and Assignees under a Statute of Bankrupt, to avoid Leases, and redemise for security of Money made to the Defendant by the Bankrupt, on pretence the Commissioners had Assigned the Creditors to pay the Money to the Defendant, and he to Assign his Estate; Whereas the Commissioners had no power to do the same, and the Estate in Law made to the Defendant was two Years and six Months before the pretended Bankruptcy; and for Plea, the Defendant offers the Indentures, and a Fine levied to him, long before the Bankruptcy.*

**T**H E said Defendant, for Demurrer to the said Bill, saith, that if all the said Bill were true, as it is not; yet the said Complainants of their own shewing, as they themselves have made their Case, ought not to be relieved thereupon either in Law or Equity: For this Defendant saith, that if it were true, that J. E. in the Bill named, and F. his Wife in the Month of, &c. in the 22<sup>th</sup> year of the Reign, &c. were lawfully seised of a good, perfect and indefeasible Estate to them, and to the Heirs of the said J. E. of the Messuage or Tenements in the Bill mentioned; and that the said

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J. and

J. and F. being so seised by agreement had and made by and between them the said J. E. and F. his Wife and this Defendant, did by their Indenture of Lease under their Hands and Seals, bearing date the twelfth day of *J.* which was in the said *22<sup>th</sup>* year, &c. Demise, Grant, and to Farm, let unto this Defendant the said Mesuages or Tenements for the Term of 21 Years and 28 Days, from the Feast, &c. rendring a Penny Rent yearly at the Feast of, &c. if the same were lawfully demanded: And that this Lease was made in Consideration of 240 *l.* paid, or lent by this Defendant to the said J. E. and F. his Wife. And if it be likewise true, that this Defendant in, and upon the *14<sup>th</sup>* Day of the said Month of, &c. in the said *22<sup>th</sup>* Year, &c. did Redemise the said Mesuages or Tenements to the said J. E. and F. his said Wife, for the Term of 21 Years from the six and twentieth day of *J.* in the said *22<sup>th</sup>* Year, &c. yielding and paying therefore yearly, during the said Term, unto this Defendant the sum of 30 *l.* at the Feast of, &c. and the first payment thereof to begin at the, &c. *Anno Dom. 1625*, &c. with a Proviso, That if the said Rent of 30 *l.* should be behind and unpaid in part, or in all, over or after any of the days of payment limited for the payment thereof, that then, and from thenceforth it should, and might be law-  
ful

ful to and for this Defendant into the said  
Messuages or Tenements to re-enter. And  
if it be likewise true, That the said J. E.  
did become bound unto this Defendant  
in a Bond of 300 l. conditioned for the  
performance of the Covenants and A-  
greements contained in these Indentures:  
And that afterwards the said F. died, and  
the said J. E. her Husband survived, and  
did truly pay to this Defendant the sum  
of 30 l. upon the Feast day of the Nativity  
of St. *John Baptist*, which was in the said  
Year of our Lord God 1625. for a Years  
Rent then due upon the said last menti-  
oned Lease. And if it be likewise true,  
That the said J. E. upon the Feast of the  
Nativity of St. *John Baptist* 1626. did  
fail to pay the said sum of 30 l. then due  
for the said Rent, and did after condes-  
cend to make, and did make unto this  
Defendant one other Lease of the said  
Messuages or Tenements, by Indenture,  
bearing Date the 28<sup>th</sup>. day of *December*,  
1626. and in the second Year of the  
Reign of our Sovereign Lord the King's  
most Excellent Majesty that now is, for  
the Term of 21 Years, to begin from the  
expiration of the said first recited Lease,  
for the Yearly Rent of one Pepper-Corn,  
upon Condition, That if the said J. E.  
his Executors, Administrators or Assigns,  
or any of them did, or should from time  
to time, and at all times then after, du-  
ring the residue of the said Term of 21

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Years

Years then to come and expired, well and truly pay, or cause to be paid unto this Defendant, his Executors, Administratos or Assigns the said Rent of 30*l.* at such days, times and place, and in such Manner and Form as in the said recited Indenture of Lease is limited and appointed, then the said last mention'd Lease should Cease, Determine and be utterly Void. And if it be likewise true, That the said J. E. did afterwards pay unto this Defendant the 30*l.* which was then formerly due to have been paid at the Feast of St. *John Baptist*, which was in the said Year of our Lord God, 1626. and did after pay unto this Defendant the Rent of 30*l.* due at the Feast of St. *John Baptist*, *Anno Dom.* 1627. And did pay unto this Defendant the like Rent of 30*l.* at the Feast of St. *John Baptist*, *Anno Dom.* 1628. And if it be likewise true, That afterwards as the said Rent of 30*l.* due at the Feast of St. *John Baptist*, 1629. was behind and unpaid, and that this Defendant for non-payment thereof did enter upon the said Demised Premises, and hath received, or might have received of the Under-Tenants thereof all the Rents or Profits thereof, as well those that were behind at the Feast of St. *John Baptist*, 1629. as such as have grown due ever since, the value of the same Tenements being 30*l. per Annum.* And if it be likewise true, That the said

J. E.



J. E. were a Man that did seek or get his Living by Buying and Selling, and that the said J. E. were indebted to the Complainants and others in the sum of 500*l.* and did in *December, Anno Dom. 1626.* begin to keep his House in *St. Albans*, to the intent to delay his Creditors from the Recovery of their just and true Debts, and hath since absented himself, and thereby is become a Bankrupt. And if it be likewise true, That the said Complainants, and others of the Creditors of the said J. E. did the 28<sup>th</sup> day of *J.* last, being the 28<sup>th</sup> day of *J.* *Anno Dom. 1631.* become Suiters to the Right Honourable the Lord Keeper, &c. for a Commission upon the Statutes of Bankrupts, to be awarded against the said J. E. and that thereupon a Commission was awarded the 29<sup>th</sup> Day of *J.* now last past, directed to the Commissioners in the Bill named, or to any four or three of them. And if it be true, That the said Commissioners have begun to put the said Commission in Execution, and have found that the said J. E. being indebted to the said Complainant and others, did in the Month of *December, Anno Dom. 1626.* begin to keep his House, and absent himself from his Creditors, and that the said J. E. did thereby become a Bankrupt, as by the said Bill is set forth. This Defendant for Demurrer to the said Bill saith, that if all

the said Surmises and Allegations were true, yet the said Complainants, of their own shewing, ought not thereupon to be relieved either in Law or Equity; for this Defendant saith, that the said Commissioners, by vertue of the said Commission, had not any thing to do with any of this Defendants said Leases, neither were the same Leases any way subject to the said Commission, for that it appeareth, of the Complainants own shewing, that the said Leases were made for good consideration of Mony, paid long before the said J. E. did become a Bankrupt (that is to say) the said first Lease made by the said J. E. unto this said Defendant, and the Redemise thereupon made by this Defendant to the said J. E. were both made in consideration of 240 *l.* paid by this Defendant to the said J. E. to secure unto him this Defendant, the sum of 30 *l.* *per Annum* out of the Mesuages or Tenements thereby Demised for 21 years. And the said later Leases, as it appears of the Complainants own shewing, was made after a forfeiture of the Redemise made by this Defendant to the said J. E. and after a forfeiture of a Bond of 300 *l.* and the same was only made to secure the subsequent payments of the said Rent of 30 *l.* *per Annum*. And this Defendant saith, that the said first Lease, and the said Redemise, being so as aforesaid, made in *June, Anno Dom.*

1624.

1624. and in the 22<sup>th</sup> Year, &c. this Defendant then could not prognosticate that the said J. E. would become a Bankrupt in *December* 1626. which was two Years and six Months after the making of the said Lease and Redemise; for which cause, and because it appeareth of the Complainants own shewing, that the said Lease and Redemise were made for the consideration of 240*l.* and to secure to this Defendant 30*l. per Annum* for 21 Years, and were made two Years and six Months before the said J. E. did become a Bankrupt: And because the Complainants by their Bill do set forth a good Title both in Law and Equity to this Defendant, of, and in the Mesuages, Lands and Tenements in question, but do not shew nor derive to themselves any Title at all thereunto, either in Law or Equity, neither by Grant nor Assignment from the Commissioners, nor otherwise; therefore this Defendant doth Demur, and abide in Law upon the insufficiency of the said Bill, and doth humbly demand Judgment of this Honourable Court, if he, this Defendant, shall be compelled to make any answer thereunto. And for further Cause of Demurrer to the said Insufficient Bill, this Defendant saith, That the Title set forth by the Complainant by their said Bill to the Leases in question, or to the Lands, Tenements or Hereditaments

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thereby Demised, is no good Title in Law or Equity. For if it be true, That the Commissioners, upon these Statutes of Bankrupts, did Assign and Appoint the Complainants to pay and tender unto this Defendant the sum of 240 *l.* with Interest, and in such manner as by the said Bill is suggested; and Assign and Appoint them to take from this Defendant an Assignment or Conveyance of the Leases made to this Defendant of the Lands in the Bill mentioned, to the benefit and behoof of the Complainants, and of the other Creditors of the said J. E. yet the said Commissioners had no power by any the Statute or Statutes of Bankrupts, or by their Commission, either to Assign or Appoint the Complainants to pay or tender unto this Defendant any sum or sums of Money, or to Assign or Appoint this Defendant to Assign or Convey the said Leases or Lands, Tenements or Hereditaments thereby Demised. For which Cause also, and because there is no matter of Equity contained in the said Bill, but the said Commissioners do thereby endeavour to avoid a plain, honest and lawful contract made for just and valuable consideration two Years and six Months before the said J. E. became a Bankrupt, this Defendant doth Demur in Law upon the insufficiency of the said Bill, and doth humbly demand the Judgment of this Ho-

Honourable Court, if he, this Defendant, shall be compelled to make any answer thereunto. And for Plea in Bar to this said Bill, this Defendant saith, That the said J. E. and F. his said Wife in the Term of the Holy Trinity, which was in the 22<sup>th</sup> Year, &c. by one Fine acknowledged, and Levied before his then Majesties Justices of his Court of Common Pleas at *Westminster*, did grant unto this Defendant all, and singular the Mesuages, &c. in the said Indenture of the 12<sup>th</sup> and 14<sup>th</sup> days of *June*, in the said 22<sup>th</sup> Year, &c. mentioned by the names of three Mesuages, &c. with the Appurtenances in the Town of *St. Albans*, and in the Parish of *St. Michaels*: To have, and to hold to this Defendant, from the Feast of *St. John Baptist* then next following, for the Term of 21 Years and 28 Days then next following, and fully to be compleat and ended, as by the said Fine remaining upon Record in his Majesties said Court of Common Pleas appeareth. And therefore this Defendant demandeth the Judgment of this Honourable Court, if against the Indenture of the said J. E. under his Hand and Seal, made for the consideration of 240*l.* confessed by the Complainants to be paid, and the same Indenture acknowledged by the said Complainants to be made two Years and six Months before the said J. E. did become a Bankrupt; and if  
against

against the said Fine, the said Complainants, as Creditors to the said J. E. upon a bare surmise, that the Commissioners upon the Statute of Bankrupts, have appointed them the said Complainants to pay 240*l.* and this Defendant to Assign or Convey his Interest to the said Complainants; the said Complainants shall be received to Complain in this Honourable Court. All which Matters this Defendant is ready to maintain as this Honourable Court shall award, and humbly prays to be dismissed forth of the same, with his reasonable Costs and Charges in this behalf most wrongfully sustained.

Ano.

Mr. Ben. Hinton's Case in Chancery.

Hillary 1687.

*John Butcher* Plaintiff, exhibited his Bill against *Ben. Hinton*, *John Hill*, *Obadiab Sedgwick* and *George Sittwell*, Assignees of the Commissioners of Bankruptcy awarded against *Hinton* of London Goldsmith, *George Parker*, *Parson Parks*, *Rosomond Watson* and *Elizabeth* and *William Short*, Defendants.

**T**HAT *Butcher* and *Short* were Partners in 1669. in the Norway Trade for Timber used in Rebuilding London for seven years, two years of which *Butcher* was in Norway. And having occasion for Money to pay Bills before the Goods could be disposed of, *Short* employed *Hinton* as Banker, who paid and received several sums on the joint Account: and not suspecting any unjust dealing two years after accepted the Account *Hinton* gave, without examining the Items. The Bill.

That *Butcher* and *Short* being forc'd to trust great quantites of Goods, sustained great Losses; *Hinton* finding them in sudden Exigences to pay Bills, took advantage and prepared Accounts of Money

Money paid and received, in which *Hinton* made them Debtors 4000 *l.* and pretended there was no Error or Overcharges, desired Bonds for the said balance, declared it should be no prejudice, and if any Errors, it should be rectified, and the Security should be for no more than should appear to be due: They signed the Account and gave Bonds.

That after *Hinton* received and paid divers sums on Account on the Partnership, and perceiving they were forc'd to give great Credit, and being in great Exigences to pay Bills of Exchange and other occasions in Trade, took advantage and drew up another Account, and Bonds, and required them to execute the same, which they were forced to do, else he threatned to ruin them by bringing Actions on the Penalties; and being Conscious he had wronged them, contrived to avoid a re-examination, Dec. 4. 1675: pretending there was above 6000 *l.* due, and that he was pressed by his Creditors, and could not pacifie them unless he and his other Creditors would become bound; but *Butcher* alledging there was not so much due, and the Partnership being ended, and their Debts divided, was unwilling to enter into new Bonds for more than his own part, and be discharged of *Shorts* part, and have the Bonds and Securities delivered up, and the new Bonds to be sub-

ject



ject to the same examination the old ones were; and to make good no more than a moiety, which *Hinton* agreed to; and agreed that he and *Short* should be bound for 2000*l.* And *Hinton* promised to deliver up the old Bonds, and *Butcher* should be discharged of all former Bonds, and *Hinton* executed two Receipts on the 4<sup>th</sup> of Decemb. 1675. one of 4000*l.* and the other of 2500*l.* being the sum demanded to be due on the old Bonds, and they sealed new Bonds for 6300*l.* with *Hinton* to his Creditors.

That *Hinton* took Counterbonds of *Butcher* and *Short* to save him harmless, and they having paid above 3000*l.* and *Hinton* delaying to deliver up the old Bonds, or to come to a fair Account, *Butcher* brought a Bill to compel him thereto, but *Hinton* threatned to ruin him unless he would execute a General Release, and give new Bonds, which he was compelled to do on *Hinton*'s promise, that he would come to a fair Account, and no use should be made thereof, but to secure what was justly due: And thereupon he executed such Release and new Bonds.

That *Hinton* failing, a Commission of Bankruptcy was awarded against him, and he declared a Bankrupt: And all the Bonds were assigned to *Sedgwick*, *Sittwell* and *Hill*, to whom *Butcher* applied himself to have the old Bonds, Release and

and Security delivered up and cancelled, and that the Accounts might be examined, being willing to pay what should appear to be due (if any thing due on his Account,) which the Assignees refused to do, and threatned to sue the old and new Bonds, and recover the Penalties, tho' he had paid much on the new Bonds. And in looking over the Accounts found divers Errors, Omissions and Miscomputations; and made his Accounts to carry 12 *l. per Cent.* Interest, and had charged near 3000 *l.* for Interest at 12 *l. per Cent.* and that thrown into several Ballances, Interest was again charged at 12 *l. per Cent.* which was Interest upon Interest at 12 *l. per Cent.* and *Hinton* had several sums of Money in his Hands which he received, so that he charged the Plaintiff with Interest in effect for his own Money 12 *l. per Cent.* and Interest for that Interest at 12 *l. per Cent.* and had overcharged for Prises of Dollars: And no allowance made for Money the Partners paid on *Hinton's* Account, nor of Money paid the Assignees; so that the Plaintiff was wronged 5000 *l.* the Plaintiff hoped the Account should be unravelled, being willing to pay what is due on a fair Account, if any thing on his part due. And the old and new Bonds ought to be delivered up.

That

That *Hinton* and *Short* would lay the whole on the Plaintiff, and refused to produce the Books of Accounts and Bonds; That the same might be produced, and old and new Bonds delivered up, and satisfaction on Judgments acknowledged, if any be, and the Accounts examined and liquidated, and the Plaintiff on paying his part of what (if any thing) be due on his part, and that the Defendants might answer, and the Plaintiff be relieved, Is the substance of the Bill.

They believed *Butcher* and *Short* were Partners, and *Hinton* their Banker, who received and paid Mony on the joint Account. And as to the Account from July 1680. they referred to *Hinton's* Books, but as to all before, they pleaded the Bonds, and the 9th of July 1680. a General Release given *Hinton*. Hill, Sedgwick  
and S:well for  
Answer, say

It was ordered the Plea should stand for an Answer, with liberty for the Plaintiff to except, who excepted, and the Defendants Answered. As to all Errors, Overcharges and Usurious Interest they referred to *Hinton's* Books. 17 July 4 Jac.  
II

That the Plaintiff and *Short* were bound with him to several persons, and that the Plaintiff had paid several sums to the Assignees: That the Plaintiff exhibited a Bill against him to Account, and an Account was ordered, but they Accounted between themselves, and the Plaintiff. Hinton Answered, and says

Plaintiff was greatly indebted to him, and 1 July 1680. he entred into 42 several Bonds for payment of 100*l.* a-piece at 100*l.* a Month; and the 9<sup>th</sup> of July the Plaintiff gave a General Release, since which he had several dealings with him, and was willing to Account for the same. And by his further Answer,

That the Plaintiff and *Short* was indebted to him on the Plaintiffs coming to *England*, 6000*l.* that the Accounts were fairly stated without any abuse. And about *Decemb.* 1675. they were bound with him to several Creditors, and they gave him Counter-security. As to Errors referred to his Books, and that the 4000*l.* was brought on the Ballance of the last Account.

*Short* being  
dead, his Wife  
and Administra-  
trix answered.

Believes the Matters *prout* Bill, and that the Plaintiff and her Husband were great sufferers, and that on a fair Account, little, if any thing was due to *Hinton*.

That *Short* in 1680 exhibited a Bill against *Hinton*, *Parker*, *Parks*, *Robinson*, *Watson* and *Butcher*, 12 Nov. 1. *W. M.* *Sedgwick*, *Sitwell* and *Hill* were made Parties.

And *Short* dying, his Administratrix brought her Bill of Revivor against all the said Defendants, which to the purpose, as *Butcher's* Bill, to have a fair Account, and be relieved.

On

On reading the Proceſs and view of <sup>11 Decemb.</sup> *Hinton's Accounts*, whereby many Er- <sup>2 W. & M.</sup> rors, Overcharges and Miſcomputations appeared, The Court declared, the Defendants, the Affignees ought to ſtand in place of the Creditors of *Hinton*, to whom the Bonds of 6300 *l.* was given, and referred it to Sir *John Francklin* to look into the whole matter, beginning with the Account diſtinguiſhed by the name of the 4000 *l.* Account, made up about 1670. and ſo downwards into the ſeveral Accounts, and to ſtate how he finds the ſame, and Errors, Overcharges and Miſcomputations and Allowances of Intereſt not allowed by Law appeared to be in any of *Hinton's* Books of Accounts, and what *Mony Butcher* and *Short*, and which of them paid towards diſcharge of the Bonds in *Decemb.* 1675. or any other Bonds, and which of them, when, and to whom. And *Hinton's* Books, Accounts and Bonds were to be left with the Maſter on Oath.

The Maſter made his Report, and <sup>22 Jani. 1690.</sup> ſhews the Errors, Overcharges and Miſcomputations, and Intereſt carryed from one Ballance to another at 12 *l. per Cent.*

It appeared that in the 4000 *l.* Account, <sup>3 Nov. 2 W & M.</sup> there was an Error of 500 *l.* beſides <sup>M. on hearing</sup> 224 *l.* 14 *s.* 6 *d.* charged for Intereſt <sup>on the Report.</sup> above lawful Intereſt, which were made part of the next Ballance, and carried

T Interest

Interest upon Interest at 12 *l. per Cent.* And the 4<sup>th</sup> of *Decemb.* 1675. the 500 *l.* between *Novemb.* 1670. and the said 4<sup>th</sup> of *Decemb.* 1675. the Plaintiffs were overcharged in unlawful Interest 1789 *l.* 1 *s.* 7 *d.* So then there was due for Money and Lawful Interest but 3986 *l.* 34. 1 *d.* which with 1056 *l.* 10 *s.* Lawful Interest to the 4<sup>th</sup> of *May* 1580. made 8042 *l.* 4 *s.* 9 *d.*

Towards discharge whereof the Plaintiff paid *Hinton's* Creditors, by his order, 4627 *l.* 18 *s.* So there remained due the 4<sup>th</sup> of *May* 1680. on the joint Account 414 *l.* 6 *s.* 9 *d.* which with 266 *l.* 6 *s.* 9 *d.* Interest to the 23<sup>d</sup> of *Jan.* last, made 680 *l.* 15 *s.* 9 *d.*

And on the Plaintiff, *Butcher's* particular Account 19 *l.* 4 *s.* 3 *d.* which makes in all 700 *l.* on payment of which the Plaintiffs Council prayed the Release, and all Securities might be delivered up.

On hearing the Defendants Council on reading the Report, his Defendants Receipts for 4300 *l.* given on executing the Bonds in *Decemb.* 1675. to the Creditors, The Court declared the Account ought to be opened, and the Plaintiffs not to be charged with more than appeared by the Books to be advanced, nor with more than Lawful Interest. And Decreed.

That

That the Report be confirmed, and the Plaintiff paying the Assignees 700 l. before the last day of *Easter* Term next, the Assignees to deliver up the Releases to be Cancelled, and all Bonds, Counterbonds and Notes before entred into by the Plaintiffs to *Hinton*, or to any other person for him, and acknowledg satisfaction on any Judgment or Judgments had by *Hinton*, or any his Creditors against the Plaintiffs. And a perpetual Injunction awarded for stay of all proceedings at Law against *Butcher*, for any the matters in question, or demand in these Causes. And the Parties to give Mutual Releases to each other.

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